

RICHEY AND RICHEY
ATTORNEYS AT LAW

A PROFESSIONAL ASSOCIATION

RODNEY W. RICHEY
LOLA S. RICHEY

POST OFFICE BOX 10916
GREENVILLE, SOUTH CAROLINA 29603

(864) 467-0503
(864) 467-0646 FAX

RECEIVED

OCT 22 2018

October 15, 2018

S.C. SUPREME COURT

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

RE: Bradley Carter Aldrich vs. The State of South Carolina
Case No: 2016-CP-11-0082

Dear Mr. Shearouse:

Please find enclosed a Notice of Appeal and an affidavit of service for the same. Also, I have enclosed a copy of the Order from which the appeal is taken. Please clock and file the copies and return them to me. Thank you for your help and if you should have any questions please feel free to call me.

RICHEY AND RICHEY, P.A.

Yours truly,


Rodney Richey

RWR/
Enclosures
cc: Janell H. Gregory, Esquire

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM ANDERSON COUNTY
Court of Common Pleas
HONORABLE R. SCOTT SPROUSE
2016-CP-11-0082

RECEIVED
OCT 22 2018
S.C. SUPREME COURT

BRADLEY CARTER ALDRICH, SCDC# 330062

APPELLANT,

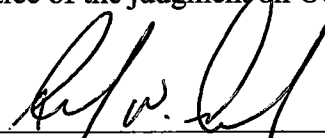
vs.

STATE OF SOUTH CAROLINA,

RESPONDENT.

NOTICE OF APPEAL

Bradley Carter Aldrich appeals the denial of his Post Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable R. Scott Sprouse, Circuit Judge on August 14, 2018 an Order issued on September 10, 2018 and filed on September 25, 2018. The Appellant received notice of the judgment on October 12, 2018.



Rodney Richey, Esquire
Attorney for the Appellant
33 Market Point Drive
Post Office Box 10916
Greenville, SC 29603
(864) 467-0503
(864) 467-0646 fax

Other Counsel of Record:
Janell H. Gregory, Esquire
Office of Attorney General State of SC
Post Office Box 11549
Columbia, SC 29211-1549

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM ANDERSON COUNTY

Court of Common Pleas

HONORABLE R. SCOTT SPROUSE

2016-CP-11-0082

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BRADLEY CARTER ALDRICH, SCDC# 330062

APPELLANT,

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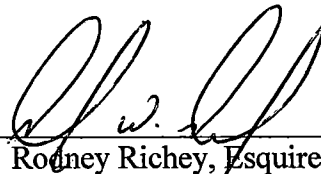
STATE OF SOUTH CAROLINA,

RESPONDENT.

AFFIDAVIT OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing copy of it in the United States Mail, postage prepaid, on October 15, 2018, addressed to their attorney of record, Janell H. Gregory, Esquire Office of Attorney General State of South Carolina, Post Office Box 11549, Columbia, SC 29211-1549.

Dated: October 15, 2018



Rodney Richey, Esquire
Attorney for the Appellant
33 Market Point Drive
Post Office Box 10916
Greenville, SC 29603
(864) 467-0503
(864) 467-0646 fax

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

Bradley Carter Aldrich, #330062,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

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

Case No.: 2016-CP-04-0082)

ORDER OF DISMISSAL)

COMMON PLEAS AND
GENERAL SESSIONS

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FILED-CLERK'S OFFICE
ANDERSON SC

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for post-conviction relief filed on April 12, 2016, by Bradley Aldrich (Applicant). Respondent file a Return and Motion to Dismiss along with a Conditional Order of Dismissal on or about April 6, 2017. Applicant filed a response to the Conditional Order of Dismissal on April 14, 2017. An Amended Return requesting a post-conviction relief hearing was filed by Respondent on or about January 9, 2018. An evidentiary hearing into the matter was convened on August 27, 2018, at the Anderson County Courthouse before the Honorable R. Scott Sprouse. Applicant was present at the hearing and represented by Rodney Richey, Esquire. Respondent was represented by Assistant Attorney General Janell H. Gregory of the South Carolina Attorney General's Office.

In April 2013, the Anderson County Grand Jury indicted Applicant for escape (2013-GS-04-0577), and for assault, beating, or wounding a police officer serving process or while resisting arrest (2013-GS-04-0578). John J. Stathakis, Esquire, represented Applicant on these charges. Assistant Solicitor Rame L. Campbell, Esquire, prosecuted the case. On June 12, 2013, Applicant pled guilty as indicted to all charges before the Honorable J. Cordell Maddox, Jr. Pursuant to the State's recommendation, Judge Maddox sentenced Applicant to imprisonment for

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concurrent terms of five years for each charge suspended upon time served and two years' probation.¹ Applicant did not appeal his conviction or sentence. Applicant subsequently violated his probation and was sentenced to a term of imprisonment for three years.

ALLEGATIONS

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

1. "I had ineffective representation," in that:
 - a. "John Stathakis has been fired from the public defenders (sic) office for ineffective representation."

Respondent submitted a Return and Motion to Dismiss on April 6, 2017, requesting the application be summarily dismissed for failing to file within the statute of limitations. Applicant submitted a reply to the motion for summary dismissal alleging the following grounds:

1. "I believed public defender John Stathakis had filed an appeal on my behalf. [On] April 2016[,] when my mother called his office to check on my appeal and found out he had been fired [and] was unable to substantiate any appeal he had filed on my behalf[,] I immediatly (sic) filed my PCR."

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTARY HEARING

At the hearing, Applicant testified on his own behalf. Applicant's plea counsel John Stathakis, Esquire (hereinafter "Counsel") also testified. This Court also had before it a copy of the records of the Anderson County Clerk of Court regarding the Applicant's convictions, the transcript from Applicant's guilty plea, the post-conviction relief application, Respondent's Return, and Applicant's records from the Department of Corrections. After reviewing the record and all testimony presented, this Court finds Applicant has failed to establish any constitutional deprivations entitling him to post-conviction relief. Therefore, this Court denies and dismisses this application with prejudice.

¹ Applicant pled guilty to assaulting a police officer on the same day. However, he is only challenging his escape conviction (2013-GS-04-0577) in his post-conviction relief application.

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Applicant's Testimony

Applicant testified Counsel represented him during his guilty plea. He testified, while in court after the guilty plea, he asked Counsel to file an appeal. Applicant testified his family called the Public Defender's Office inquiring about the status of his appeal and they were told there was no pending appeal in Applicant's case. Applicant testified he sent a letter from jail via certified mail to the Public Defender's Office to check on the status of his appeal, and was also told there was no pending appeal in his case. Applicant was unable to provide any documentation of such mailing during the hearing. Applicant testified he would not have pled guilty had he known the severity of the charge against him at the time of his plea.

Counsel's Testimony

Counsel testified he represented Applicant on his escape charge. Although Counsel did not specifically recall a discussion with Applicant specifically, he testified his standard practice with all of his clients is to discuss their right to appeal. Counsel testified Applicant did not ask him to appeal his guilty plea. Counsel testified he would have filed an appeal on Applicant's behalf if Applicant had asked him to file an appeal. Counsel testified he did not see any legal or factual issues upon which a meritorious appeal could have been filed.

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).

Ineffective Assistance of Counsel

In a post-conviction relief action, 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, Applicant must prove “counsel’s conduct so undermined the proper functioning of the adversarial process that the [proceeding] 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. Butler, 286 S.C. at 442, 334 S.E.2d at 814. 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. A post-conviction relief 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, Applicant must prove 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, 466 U.S. at 688). Second, counsel’s deficient performance must have prejudiced 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. To show prejudice in these circumstances, a defendant must demonstrate there is a reasonable probability that, but for plea counsel’s deficient failure to consult with him about an appeal, he would have timely appealed. Flores-Ortega, 528 U.S. at 484. When there has been a guilty plea, the applicant must prove

counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

Counsel's alleged failure to file an appeal

Applicant alleges Counsel was ineffective for failing to file an appeal on his behalf. The United States Supreme Court has rejected a bright-line rule counsel must always consult with the defendant regarding an appeal. Roe v. Flores-Ortega, 528 U.S. 470, 480 (2000). Instead, "counsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing." Id. Further, "a highly relevant factor in this inquiry will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings." Id.

The South Carolina Supreme Court has held there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea, absent extraordinary circumstances. Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008). However, the bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief. Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995). Instead, a defendant must offer proof that extraordinary circumstances exist such that he should have been advised of the right to appeal. Id. One situation in which extraordinary circumstances arise is when a defendant explicitly inquires about his right to appeal following a guilty plea. Jones v. State, 382 S.C. 589,

596, 677 S.E.2d 20, 23-24 (2009); Weathers, 319 S.C. at 61, 459 S.E.2d at 839.

In White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974), the South Carolina Supreme Court held that even if the post-conviction relief court finds the applicant never voluntarily and intelligently abandoned his appeal, the court has no jurisdiction to grant a belated appeal. Therefore, where an accused establishes in a post-conviction relief hearing he was unconstitutionally deprived of his statutory right to a direct appeal, the South Carolina Supreme Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected.

This Court finds Applicant has failed to meet his burden of proving he did not voluntarily and intelligently waive his right to appeal. Applicant testified he was aware of his right to appeal from his guilty plea and asked Counsel to file an appeal. Counsel testified Applicant did not ask him to appeal his guilty plea because, had Applicant asked, Counsel would have filed an appeal. Counsel testified his usual practice is to discuss his client's right to appeal during his representation. Counsel testified he did not see any meritorious claims upon which Applicant could appeal his guilty plea. This Court finds Counsel's testimony very credible, whereas Applicant's testimony is not credible. Therefore, Applicant's request for belated review of direct appeal issues pursuant to White is hereby denied, and the application is dismissed with prejudice.

CONCLUSION


Based on all the forgoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before, during, or after his plea and sentencing proceedings. Counsel was not deficient, nor was Applicant prejudiced by Counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty days from 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), SCRPC, provides that if Applicant wishes to seek appellate review, Applicant must serve and file a notice of appeal on his own behalf. Applicant 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 10 day of September, 2018.



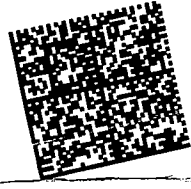
R. SCOTT SPROUSE
Presiding Judge
Tenth Judicial Circuit

Waltham, South Carolina

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Sheehy & Richey, PA
Attorneys at Law
Post Office Box 10916
Greenville, South Carolina 29603

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

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