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November 12, 2018

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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NOV 16 2018

RE: Jamie Mishoe vs. The State of South Carolina
Case No: 2017-CP-23-2381

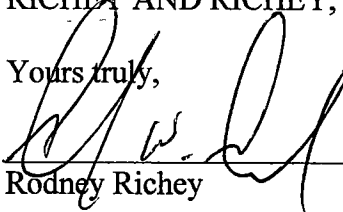
S.C. SUPREME COURT

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: DeShawn H. Mitchell, Esquire

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
HONORABLE ALEX KINLAW, JR.
2017-CP-23-2381

JAMIE MISHOE, SCDC# 370558

APPELLANT,

vs.

STATE OF SOUTH CAROLINA,

RESPONDENT.

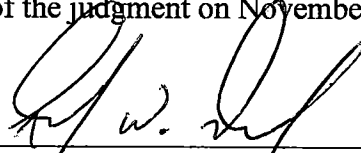
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NOTICE OF APPEAL

S.C. SUPREME COURT

Jamie Mishoe appeals the denial of his Post- Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable Alex Kinlaw, Jr., Circuit Judge on October 23, 2018 an Order issued on November 2, 2018 and filed on November 7, 2018. The Appellant received notice of the judgment on November 9, 2018.



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Columbia, SC 29211-1549

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

Court of Common Pleas

HONORABLE ALEX KINLAW, JR.

2017-CP-23-2381

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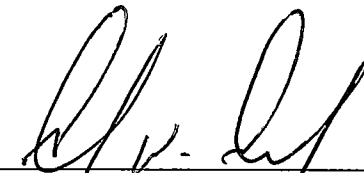
NOV 16 2018

S.C. SUPREME COURT

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 November 12, 2018, addressed to their attorney of record, DeShawn H. Mitchell, Esquire Office of Attorney General State of South Carolina, Post Office Box 11549, Columbia, SC 29211-1549.

Dated: November 12, 2018



Rodney Richey, Esquire
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PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. Applicant was indicted in September 2014 for attempted murder and possession of a weapon during the commission of a violent crime (2013-GS-23-2717). In August 2016, Applicant was subsequently indicted Applicant for murder and possession of a weapon during the commission of a violent crime (2013-GS-23-3357). Applicant was subsequently indicted in September 2016 for threatening a life (2014-GS-23-7828). Christopher D. Scalzo, Esquire represented Applicant. Solicitor Bryna S. Seay, Esquire prosecuted the case. On November 16, 2016, Applicant pleaded guilty as indicted to attempted murder, both counts of possession of a weapon during the commission of a violent crime, and threatening a life before the Honorable Letitia H. Verdin. Applicant pled guilty to the lesser included offense of voluntary manslaughter. Pursuant to a negotiated sentence, Judge Verdin sentenced Applicant to imprisonment for concurrent terms of twenty years for attempted murder, twenty years for voluntary manslaughter and five years for each charge of possession of a weapon during the commission of a violent crime. Judge Verdin then sentenced Applicant to a consecutive term of five years', suspended to five years' probation, with probation to be tolled while incarcerated, for the charge of threatening a life. Applicant did not appeal his conviction or sentence.

FACTUAL HISTORY

The facts surrounding the Applicant's conviction are as follows: On December 18, 2012, Greenville Sheriff's Office responded to the attempted murder and upon arrival, the victim stated he was in his living room with the main door open and a storm door closed and unlocked when an individual opened the door and came in. When the victim stood up, the individual shot him in

the stomach and fled on foot. The victim later identified Applicant in a photographic lineup.
Guilty Plea Trans. pg.9-10

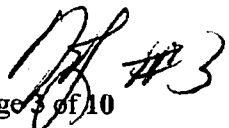
On February 23, 2013, the Greenville Sheriff's Office responded to a call at a residence and found a victim deceased of an apparent gunshot wound. Per investigation, and after several initial statements given were recanted, authorities received statements implicating Applicant in the victim's death after an argument had ensued between the two of them. Guilty Plea Trans. pg.10-12

As to the threatening a life charge, on July 17, 2014, while incarcerated at the Greenville County Detention Center, Applicant threatened the life of an officer who was performing his official duties as an officer at the time. Applicant further threatened the life of the officer's family. Guilty Plea Trans. pg.12, Lines 12-20

ALLEGATIONS

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

1. "I felt I didn't have a lawyer in favor of my best interest."
 - a. "When I wrote my lawyer letters at times he never wrote back."
 - b. "Many things made me think my lawyer was against me. It took me about a year to get any discovery. When I got it, much was left out of it. When I questioned the fact things were left out. He said he would ask the Solicitor about it. I asked him on different occasions to file motions for me and he didn't. I asked him to get up with the Detectives so I could speak with them because the information I had could've changed a lot within my case and I wanted to see the video recorded statements the Detectives had which were not a part of my discovery, yet things that were on film were mentioned to a certain degree."
2. "My lawyer didn't file motions in which I told him to."
3. "No evidence they had besides statements pointed to me."
 - a. "Though all they had were co-defendants' statements I wanted a trial."



SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTARY HEARING

Applicant's Testimony

Applicant testified Plea Counsel represented him on his charges. He testified he did not get a full copy of his discovery from Plea Counsel. Applicant testified that the discovery was supposed to have contained statements from his co-defendants that implicated him but that he never received those statements. He testified his co-defendants had given more than one statement to law enforcement. Applicant testified he requested that Plea Counsel file motions for a speedy trial and to suppress the statements. He testified when he pled guilty he knew the sentences he received were a negotiated sentences and also accepted an Alford plea to another charge. Applicant testified the alleged statements from his co-defendants were never included in his discovery.

On cross-examination, Applicant testified he met with Plea Counsel four or five times during the course of his representation. He testified Plea Counsel reviewed his discovery with him with the exception of statements made by his co-defendants. Applicant testified his mom and brother were his co-defendants and he talked to them about statements they had given to law enforcement. He testified his mother and brother indicated to him they did not implicate him in their statements.

Plea Counsel's Testimony

Plea Counsel testified he was appointed to represent Applicant on his charges. He testified at some point during the course of his representation of Applicant he sent Applicant a copy of his discovery. Plea Counsel testified included in his package of discovery were copies of statements made by Applicant's co-defendants. He testified it would not make any sense why he would not have given the statements to Applicant when he sent the discovery to him. Plea

Handwritten signature and initials, possibly "BJ #4", written in black ink.

Counsel testified he felt comfortable in the fact that he was sure he had sent Applicant a complete copy of his discovery and that his notes in his file did not reflect that Applicant did not have a copy of his co-defendants' statements. He testified from when he was originally appointed to represent Applicant he discussed Applicant's case with him initially and throughout his representation. Plea Counsel testified Applicant's co-defendants included members of his family. He testified that Applicant's murder charge stemmed from a shooting at Applicant's family's house where Applicant allegedly shot his sister's boyfriend after an argument. Plea Counsel testified several members of Applicant's family were present during this time.

On cross-examination, Plea Counsel testified during the course of his representation he met with Applicant several times to discuss his charges. He testified during those meetings he discussed the indictments and the possible punishments Applicant was facing. Plea Counsel testified he discussed Applicant's constitutional rights with him and also the State's burden of proof. He testified he talked to the lawyers of Applicant's co-defendants who indicated to him that they were going to implicate Applicant in the murder. Plea Counsel also testified Applicant knew there were statements in the discovery from his co-defendants and they discussed them.

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:

Ineffective Assistance of Counsel

Failure to Review and Provide Discovery

Applicant alleges Plea Counsel was ineffective in failing to review and provide his discovery to him. Applicant testified he did not get a full copy of his discovery from Plea Counsel. Applicant testified that the discovery was supposed to have contained statements from his co-defendants that implicated him but that he never received those statements. Plea Counsel testified at some point during the course of his representation of Applicant he sent Applicant a copy of his discovery. Plea Counsel testified included in his package of discovery were copies of statements made by Applicant's co-defendants. He testified it would not make any sense why he would not have given the statements to Applicant when he sent the discovery to him. Plea Counsel testified he felt comfortable in the fact that he was sure he had sent Applicant a complete copy of his discovery and that his notes in his file did not reflect that Applicant did not have a copy of his co-defendants' statements. This Court had the opportunity to view the testimony of each witness on this issue at the PCR hearing. This Court finds credible the testimony of Plea Counsel and finds Applicant's testimony to not be credible. This court further finds credible the testimony of Plea Counsel that Applicant knew there were statements in the discovery from his co-defendants and they both discussed those statements. As a result, Applicant has failed to show deficient performance or resulting prejudice in this regard. Therefore, this ground has no merit and must be denied and dismissed with prejudice.

Failure to File Motions

Applicant testified in a cursory fashion that Plea Counsel was ineffective for failing to

file motions to suppress his co-defendants statements and for a speedy trial. This court find these allegation to be without merit.

First, Applicant has failed to show that plea counsel was deficient or Applicant was prejudiced in plea counsel not filing a motion for a speedy trial. "A criminal defendant is guaranteed the right to a speedy trial." State v. Cooper, 386 S.C. 210, 216, 687 S.E.2d 62, 66 (Ct.App.2009), citing U.S. Const. amend. VI; S.C. Const. art. I, § 14; State v. Pittman, 373 S.C. 527, 548, 647 S.E.2d 144, 155 (2007). However, "[t]here is no universal test to determine whether a defendant's right to a speedy trial has been violated." Cooper, 386 S.C. at 216, 687 S.E.2d at 66 (citing State v. Waites, 270 S.C. 104, 107, 240 S.E.2d 651, 653 (1978)). "[T]he determination that a defendant has been deprived of this right is not based on the passage of a specific period of time, but instead is analyzed in terms of the circumstances of each case, balancing the conduct of the prosecution and the defense." Pittman, 373 S.C. at 549, 647 S.E.2d at 155; see Cooper, 386 S.C. at 217, 687 S.E.2d at 66.

A reviewing court should consider four factors when determining whether a defendant has been deprived of his or her right to a speedy trial: 1) length of the delay; 2) reason for the delay; 3) defendant's assertion of the right; and 4) prejudice to the defendant. Barker v. Wingo, 407 U.S. 514, 530, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972); see also State v. Brazell, 325 S.C. 65, 75, 480 S.E.2d 64, 70 (1997). These four factors are related and must be considered together with any other relevant circumstances. Barker, 407 U.S. at 533, 92 S.Ct. 2182.

Cooper, 386 S.C. at 216-17, 687 S.E.2d at 66.

Here, this court finds the time involved in the disposition of Applicant's case to not be in violation of Applicant's rights as Applicant was charged and indicted with several serious charges from two separate incidents. This court further finds there was no evidence the delay was the result of any attempt from the State to hinder Applicant's ability to present a defense.

Additionally, Applicant has presented no argument or evidence reflecting he suffered any prejudice as a result of the delay in the disposition of his case.

Moreover, this court finds Applicant has not met his burden in alleging Plea Counsel was ineffective for failing to file a motion to suppress the statements of his co-defendants. While this may have been a viable argument had Applicant proceeded to trial, this court finds Plea Counsel was not deficient for failing to file such motion considering Applicant pled guilty. Furthermore, this court finds Applicant has not demonstrated sufficient prejudice. Therefore, this court finds these allegations of failure to file a motion for a speedy trial and motion to suppress to be without merit. These allegations are denied and dismissed with prejudice.

CONCLUSION

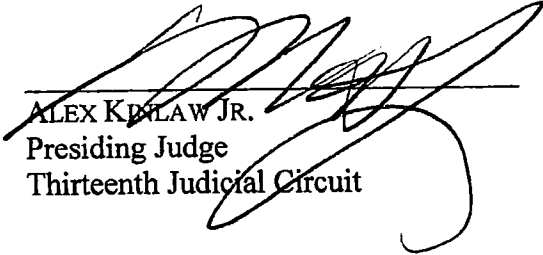
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. 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 5 day of November, 2018.


ALEX K. LAW JR.
Presiding Judge
Thirteenth Judicial Circuit

Willy, South Carolina

Copy mailed to
Attorney Richey and AG,
on 11 / 7 / 2018.

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