

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

DeAndrea G. Benjamin, Circuit Court Judge

2012-CP-32-00854

Kevin Blanding, #105745, . . . . . Applicant,

v.

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

2017 JUN 14 PM 2:34  
LISA CONNER  
CLERK OF COURT  
LEXINGTON SC

NOTICE OF APPEAL

Kevin Blanding appeals the Order of Dismissal of the Honorable DeAndrea G. Benjamin dated June 11, 2015, and filed June 22, 2015. Applicant received written Notice of Entry of this Order of Dismissal on May 5, 2017.

s/ Kevin Blanding

Kevin Blanding  
S.C.D.C. No. 00105745  
Lee Correctional Institution  
990 Wisacky Highway  
Bishopville, South Carolina 29010  
APPELLANT

May 19, 2017

ORIGINAL

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

Kevin Blanding, #105745

Applicant,

v.

State of South Carolina,

Respondent.

FILED

IN THE COURT OF COMMON PLEAS  
ELEVENTH JUDICIAL CIRCUIT

JUN 22 PM 4:41

2012-CP-32-00854

BETH A. CARRIGG  
CLERK OF COURT

ORDER OF DISMISSAL

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed February 23, 2012. Respondent made its Return on August 7, 2012, requesting an evidentiary hearing be convened. Arthur White Jr., Esquire, was initially appointed by the Lexington County Clerk of Court. Johnny E. Watson, Sr. was then substituted as counsel for Applicant. An evidentiary hearing was held on October 15, 2014, at the Lexington County Courthouse. Applicant was present and represented by Counsel Watson. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent.

At the PCR hearing, Applicant's trial counsel John W. Carrigg, Jr., Esquire, testified. The Court had before it the Lexington County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR application, the Return, the trial transcript, and the appellate records.

**I. PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted at the July 2007 term of the Lexington County Grand Jury for Possession with Intent to Distribute cocaine (2007-GS-32-03326) and PWID crack cocaine (2007-GS-32-03325). He was then

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indicted at the July 2008 term for one (1) count of trafficking heroin, 14 grams or more but less than 28 grams (2008-GS-32-1994). Applicant was represented by Counsel Carrigg. Applicant absconded after jury selection and was tried in absentia on September 24-25, 2008, before the Honorable Clifton Newman where he was found guilty of trafficking heroin, 14 gram or more but less than 28 grams. Applicant was found not guilty on the PWID charges. Judge Newman sentenced Applicant to twenty-five (25) years imprisonment.

A notice of appeal was filed with the South Carolina Court of Appeals. Wanda H. Carter, Esquire, of the South Carolina Commission on Indigent Defense perfected an appeal pursuant to Anders v. California<sup>1</sup> and petitioned to be relieved. The Court of Appeals dismissed Applicant's appeal and granted counsel's request to be relieved. State v. Blanding, Op. No. 2011-UP-59 (S.C. Ct. App. filed Dec. 21, 2009).

In this action, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel in failing to suppress evidence at trial;
2. Ineffective assistance of counsel in failing to effectively cross examine witness Gail Green
3. Ineffective assistance of counsel in failing to challenge the arrest warrant and indictment.

## II. SUMMARY AND EVIDENCE PRESENTED AT THE PCR HEARING

### Counsel John W. Carrigg's Testimony

Counsel testified he was contacted by Applicant's relative to represent him on the charges before the Court. Counsel testified Applicant appeared at jury selection but then absconded and he was tried in absentia. The trial court advised Applicant at jury selection that the trial would proceed if he did flee. Counsel testified he tried to call Applicant multiple times and argued to the trial court that there could be a legitimate reason for why he was not present on

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<sup>1</sup> 386 U.S. 378 (1967).

the day the trial was set to begin. Counsel moved for a continuance at this point and when that was denied moved to be relieved as counsel as he argued he could not adequately represent his client without him present. Counsel testified he argued that it would be difficult to effectively try his case without Applicant being present.

Counsel testified that after those motions were denied he moved to keep the drugs seized at the scene from being admitted as an unlawful search and seizure. Counsel testified he challenged the probable cause and reasonable suspicion for the issuance of the search warrant. Counsel harped on the point that the information contained in the warrant was relayed to another officer who filled the warrant out and submitted it to a magistrate. The trial court found the warrant was based on probable cause and was properly obtained. Counsel testified he did not challenge the sufficiency of the indictments. Counsel was able to successfully argue that the in-custodial statement which amounted to a confession should be excluded. The State voluntarily excluded those statements and only sought to introduce Applicant's statement to the Federal Express delivery man that the package was for him.

Counsel testified that the theory he presented to the jury was that package of drugs shipped through Federal Express was for Gail Green and not Applicant. Counsel emphasized that Green signed for the package under a false name, Monica Jones. He also testified Green initially admitted the drugs were hers and not Applicant's. Counsel testified it was his strategy to question Green on her conviction stemming from this incident. She was not charged with trafficking crack cocaine or cocaine. She was convicted of possession of cocaine and possession of crack cocaine. Counsel testified he hoped to show her testimony was biased in favor of the State since she received a sentence of seven (7) years imprisonment suspended to fifteen (15) months probation.



### 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**

Applicant alleges he received ineffective assistance of counsel. In a PCR action, "the burden of proof is on the applicant to prove his allegation by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For the Applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668 (1984), Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of

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trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668).

It is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable. A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance.

Strickland at 689, 104 S. Ct. at 2065.

Applicant has alleged counsel was ineffective in failing to suppress the drug evidence, in challenging the search warrant, for failing to effectively cross examine Gail Green, and for failing to challenge the sufficiency indictments. This Court finds Applicant failed to meet his burden of proof. This Court finds that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. Counsel's representation did not fall below an objective standard of reasonableness.

#### Failure to Suppress Drug Evidence and Search Warrant

This Court finds Applicant failed to meet his burden to prove that counsel's performance was either deficient or ineffective for failing to suppress the drug evidence. “When reviewing the circuit court's ruling on a motion to suppress based on the Fourth Amendment, ‘an appellate court must affirm if there is any evidence to support the ruling’, and will reverse only when there is clear error.” State v. Cheeks, 400 S.C. 329, 334, 733 S.E.2d 611, 614 (Ct. App. 2012), *quoting* State v. Wright, 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011). This Court finds Counsel

on Green's potential bias after she received a favorable sentence on a charge stemming from the underlying incident. Counsel attempted to show the jury that the drugs were meant for Green and not for Applicant. Applicant did not present any testimony showing Green's answers at trial would have been different. This allegation is denied and dismissed with prejudice.

#### Failure to Challenge Indictments

This Court finds Applicant has failed to meet his burden in proving counsel was ineffective in this regard. In State v. Tumbleston, 376 S.C. 90, 654 S.E.2d 849 (Ct. App. 2007), the South Carolina Court of Appeals opined:

"An indictment is sufficient if the offense is stated with [enough] certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead acquittal or conviction thereon. The true test of the sufficiency of an indictment is not whether it could be made more definite and certain, but whether it contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet."

Id. at 97 – 98, 654 S.E.2d at 853. "Therefore, an indictment passes legal muster when it charges the crime substantially in the language of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood." Id. Applicant's indictment, on the charges challenged, tracks the statutory language of each charge precisely. Applicant has produced no credible argument of why the indictments were not sufficient. Further, making such a motion would not stop subsequent prosecution on the charges. Accordingly, Counsel's performance was not objectively unreasonable based on professional norms in failing to file a motion to quash the indictments.

Further, this Court finds Applicant cannot prove resulting prejudice. Even if counsel had filed such a motion and been successful in quashing the indictments, the State could have reindicted Applicant on the same charges and subsequently pursued prosecution. Under S.C.

Code Ann. § 17-19-90 (2003), “every objection to any indictment for any defect apparent on the fact thereof shall be taken...on motion to quash such indictment before the jury shall be sworn and not afterwards.” Since the Double Jeopardy Clause of the Fifth Amendment attaches in a jury trial only once the jury is sworn, a successful motion to quash, by its very definition, will not work to bar subsequent prosecution on the same allegation on that grounds. See State v. Prince, 279 S.C. 30, 301 S.E.2d 471 (1983). Accordingly, any motion to quash the indictment would not have prevented the State from pursuing the charges at a later date. Therefore, Applicant was not prejudiced by this alleged error.

Having found the allegations raised by Applicant at the PCR hearing to be wholly without merit, this Court finds the current application for post-conviction relief must be denied and dismissed with prejudice.

#### **All Other Allegations**

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

#### **IV. CONCLUSION**

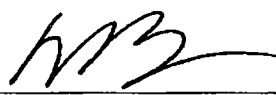
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate counsels’ performance was unreasonable under prevailing professional norms. Cherry, 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 will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 17 day of June, 2015.



DEANDREA G. BENJAMIN  
Presiding Judge

Columbia, South Carolina



STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS  
ELEVENTH JUDICIAL CIRCUIT

FILED

7:05 PM '15  
JUN 22 2015  
CASE NO.: 2012-CP-32-0854


KEVIN BLANDING, #105745

vs.

STATE OF SOUTH CAROLINA

Defendant.

MOTION AND ORDER INFORMATION  
FORM AND COVERSHEET

Plaintiff's Attorney: Johnny E. Watson, Sr., Bar No. 5967 Address: PO Box 2305 Columbia, SC 29202 Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: J. Clayton Mitchell, Bar No. 101443 Address: PO Box 11549 Columbia SC 29211 Phone: _____ Fax _____ E-mail: _____ Other: _____
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
<b>SECTION I: Hearing Information</b>	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES/ <input type="checkbox"/> NO	
<b>SECTION II: Motion/Order Type</b>	
<input type="checkbox"/> Written motion attached <input type="checkbox"/> 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 <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	
June 5, 2015 Date submitted	
<b>SECTION III: Motion Fee</b>	
<input type="checkbox"/> PAID - AMOUNT: \$ _____ <input type="checkbox"/> EXEMPT: (check reason)	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> 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: _____ <input type="checkbox"/> Other: _____	
<b>JUDGE'S SECTION</b>	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
<b>CLERK'S VERIFICATION</b>	
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	

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FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2012CP3200854

Kevin Blanding

State of SC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
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DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a) SCRPC  
 Rule 43(k), SCRPC (Settled);  Other \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order  Statement of Judgment by the Court:

ORDER INFORMATION

This order  ends  does not end the case.

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on July 6, 2015 and a copy mailed, emailed or placed in the appropriate attorney's box on this July 6, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Johnny Watson

Clay Mitchell

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

*Beth Camigg/mh*