

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

**RECEIVED**

DEC 31 2018

APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

DeAndrea G. Benjamin, Circuit Court Judge

Case No. 2016-CP-43-02038

London A. Kelley, #362015,

Appellant,

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DEC 27 2018

SC Court of Appeals

v.

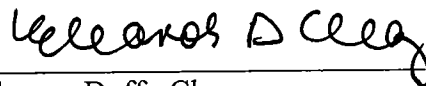
State of South Carolina,

Respondent.

NOTICE OF APPEAL

Londa A. Kelley, #362015, appeals the order of the Honorable DeAndrea G. Benjamin dated November 11, 2018 and recorded November 19, 2018. Appellant received written notice of entry of this order November 27, 2018.

December 21, 2018

  
Eleanor Duffy Cleary  
Bar # 7068  
Cleary Law LLC  
Post Office Box 40086  
Columbia, SC 29240  
(803) 376-0075  
ellen@clearylalawllc.com  
Attorney for Appellant

Other Counsel of Record:

Mr. Samuel L. Key, Assistant Attorney General  
South Carolina Office of the Attorney General  
PO Box 11549  
Columbia, SC 29211-1549  
(803) 734-8357

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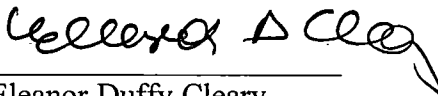
DEC 27 2018

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PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Respondent, State of South Carolina, by personally delivering a copy of it to the SC Office of the Attorney General, 1000 Assembly Street, Rembert Dennis Building, Columbia, South Carolina, addressed to Assistant Attorney General Samuel L. Key on December 21, 2018.

December 21, 2018



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Attorney for Appellant



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**CLEARY LAW**  
UNRAVELING YOUR LEGAL ISSUES

PHONE: (803) 376-0075  
FAX: (803) 753-9988  
ELLEN@CLEARYLAWLLC.COM

December 21, 2018

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

**RECEIVED**  
DEC 27 2018  
SC Court of Appeals

RE: London A. Kelley, #362015 v. State of South Carolina, 2016-CP-43-02038

Dear Ms. Kitchings:

Enclosed for filing is a notice of appeal in the above post-conviction relief case. Also enclosed are the following:

- (1) Proof of service of the notice of appeal on the respondent.
- (2) A copy of the order which is to be challenged on appeal.

Please contact me if additional information is needed.

Sincerely,

Eleanor Duffy Cleary  
Bar #7068  
Cleary Law LLC  
Post Office Box 40086  
Columbia, SC 29240  
(803) 376-0075  
Attorney for Appellant

cc:

Mr. Samuel L. Key, Assistant Attorney General  
South Carolina Office of the Attorney General  
PO Box 11549  
Columbia, SC 29211-1549  
(803) 734-8357  
Attorney for Respondent

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DEC 27 2018

SC Court of Appeals

December 21, 2018

Ms. Frances B. Ray, RPR  
Third Circuit Court Reporter  
2216 Timberlane Drive  
Florence, South Carolina 29506

RE: London A. Kelley, #362015 v. State of South Carolina, 2016-CP-43-02038

Dear Ms. Ray:

On March 28, 2018 the above PCR case was tried before the Honorable DeAndrea G. Benjamin, Circuit Court Judge, in Sumter County. As we previously discussed via email, you were the court reporter for this case.

I request that you provide me with a transcript of the entire proceedings. As we discussed, I would like an expedited copy and I am sending a check for \$435 to cover your estimated cost for the expedited transcript. If additional funds are required, please let me know.

In light of the holidays, I do not require that the transcript be provided in seven days. Instead, I would respectfully request the transcript be provided by January 15, 2019. If that is not possible, please email me.

I hope you have a wonderful holiday.

Sincerely,

Eleanor Duffy Cleary  
Bar #7068  
Cleary Law LLC  
Post Office Box 40086  
Columbia, SC 29240  
(803) 376-0075  
Attorney for Appellant

cc: Desiree Allen, Court Reporter Manager, S.C. Court Administration  
Clerk, Court of Appeals



POST OFFICE BOX 40086  
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UNRAVELING YOUR LEGAL ISSUES  
December 21, 2018

PHONE: (803) 376-0075  
FAX: (803) 753-9988  
ELLEN@CLEARYLAWLLC.COM

The Honorable James C. Campbell  
Sumter County Judicial Center  
215 North Harvin Street  
Sumter, SC 29150-4974

**RECEIVED**  
DEC 27 2018  
SC Court of Appeals

RE: London A. Kelley, #362015, Appellant v. State of South Carolina,  
Respondent, 2016-CP-43-02038

Dear Mr. Campbell:

Enclosed for filing is a notice of appeal in the above case. Please feel free to contact me if there are any questions.

Sincerely,

Eleanor Duffy Cleary  
Bar #7068  
Cleary Law LLC  
Post Office Box 40086  
Columbia, SC 29240  
(803) 376-0075  
Attorney for Appellant

cc:  
Mr. Samuel L. Key, Assistant Attorney General  
South Carolina Office of the Attorney General  
PO Box 11549  
Columbia, SC 29211-1549  
(803) 734-8357  
Attorney for Respondent

**RECEIVED**  
DEC 31 2018  
S.C. SUPREME COURT

FORM 4

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

RECORDED

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2016CP4302038

London A Kelley

2018 NOV 19 PM 2:35

South Carolina State of

JAMES C. CAMPBELL  
 CLERK OF COURT

PLAINTIFF(S)

SUMTER COUNTY DEFENDANT(S)

Submitted by: Clerk of Court

Attorney for:  Plaintiff  Defendant  
 Self-Represented Litigant

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 (Vol. Nonsuit);
  - 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;
  - Other: \_\_\_\_\_
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
  - Affirmed;
  - Reversed;
  - Remanded;
  - Other:

**RECEIVED**  
 DEC 27 2018  
 SC Court of Appeals

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; (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION

This order  ends  does not end the case.  
 Additional Information for the Clerk: \_\_\_\_\_

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.**

**E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.**

\_\_\_\_\_  
 Circuit Court Judge

2161  
 Judge Code

11/19/2018  
 Date

For Clerk of Court Office Use Only

This judgment was entered on \_\_\_\_\_, and a copy mailed first class or placed in the appropriate attorney's box on \_\_\_\_\_, to attorneys of record or to parties (when appearing pro se) as follows:

Hemphill P. Pride II PO Box 4529 Columbia, SC  
29240-4529

Alan McCrory Wilson S.C. Attorney General's Office PO  
Box 11549 Columbia, SC 29211-1549

---

ATTORNEY(S) FOR THE PLAINTIFF(S)

---

ATTORNEY(S) FOR THE DEFENDANT(S)

*James C. Campbell*

---

Court Reporter

---

James C. Campbell - Clerk of Court

**Court Reporter:**

**E-Filing Note:** In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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STATE OF SOUTH CAROLINA **RECORDED** IN THE COURT OF COMMON PLEAS  
 COUNTY OF SUMTER 2018 NOV 19 AM 11:06 FOR THE THIRD JUDICIAL CIRCUIT  
 London A. Kelly, #362015, JAMES C. CAMPBELL Civil Action No. 2016-CP-43-02038  
 CLERK OF COURT  
 SUMTER COUNTY, S.C.  
 Applicant,  
 v.  
 State of South Carolina,  
 Respondent.

**ORDER OF DISMISSAL** **RECEIVED**  
 DEC 27 2018  
 SC Court of Appeals

This matter comes before the Court upon Application for Post-Conviction Relief ("PCR") filed by Applicant London A. Kelly ("Applicant") on October 31, 2016. Respondent filed its Return March 3, 2017. On March 26, 2018 a hearing was conducted at the Sumter County Courthouse. Applicant was present along with his counsel, Hemphill Pride, Esquire. The State was represented by Julie Coleman, Esquire.

For the reasons set forth below, the Application for Post-Conviction Relief is DENIED, and this matter is DISMISSED WITH PREJUDICE.

**FACTUAL AND PROCEDURAL HISTORY**

Applicant is currently incarcerated with the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was indicted by the August 2014 term of the Sumter County Grand Jury for Murder, Accessory After the Fact of Murder and Conspiracy (2014-GS-43-0724). Timothy Murphy, Esquire, represented her until October 26, 2014, including the arraignment. Charlie J. Johnson, Esquire was retained to represent Applicant on October 26, 2014 and continued through the conclusion of trial. On October 27-31, 2014, Applicant proceeded to trial before the Honorable George C. James, Jr. Applicant was found guilty for accessory after the fact of murder, and not guilty for murder and conspiracy. Judge James

sentenced Applicant to twelve years in prison. Applicant filed a timely notice of appeal, perfected by Lara M. Caudy, Esquire. The South Carolina Court of Appeals dismissed Applicant's appeal after review. State v. Kelly, Op. No. 2016-UP-333 (S.C. Ct. App. 2016). The Remittitur was returned July 22, 2016.

Applicant filed an application for PCR on October 31, 2016, in which she alleged that she was being held in custody unlawfully due to ineffective assistance of counsel stating the following reasons: (1) "Ms. Kelly discharged Mr. Murphy after he told her he did not believe her account of the case and he advised her to lie under oath about Quinton Brown" (2) "Although Mr. Johnson had basic information about the case he did not, in fact, receive the file from Mr. Murphy's office until October 27, 2014, following the completion of jury selection." (3) "Despite clearly having inadequate time to prepare for any trial, particularly a murder case, the record is silent as to Mr. Johnson ever making a motion to continue the case." (4) "In fact, Mr. Johnson did not receive the file from Tim Murphy's office until the afternoon of October 27, 2014. It is now clear, that Mr. Johnson did not have the entire file throughout the trial." (5) "Furthermore, after the conviction was returned and the court proceeded to sentencing, Mr. Johnson's lack of preparation was evident. He told the court "I am not sure exactly how to argue mitigation in what she did, because I am not sure exactly of the accessory or what she did after the fact from the evidence I am aware of."

#### 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 and arguments presented at the PCR Hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. CODE ANN. § 17-27-80 (2003).

I. **TESTIMONY OF APPLICANT: INEFFECTIVE ASSISTANCE OF COUNSEL**

Applicant alleged she received ineffective assistance of counsel due to multiple deficiencies by counsel which are laid out in Applicant's Application and discussed further in the upcoming paragraphs. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC). Where the application alleges ineffective assistance of counsel as a ground for relief, 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 442, 334 S.E.2d at 814.

First, the applicant must show that counsel's performance "fell below an objective standard of 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 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. "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." Id. at 117-18, 386 S.E.2d at 625; see Strickland, 466 U.S. at 688, 692, 104 S. Ct. at 2065, 2067 ("[T]he defendant must show that counsel's representation fell below an objective standard of reasonableness [and] . . . any deficiencies in counsel's

performance must be prejudicial to the defense in order to constitute ineffective assistance under the Constitution.”); see also Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006) (“PCR applicant must prove: (1) that counsel failed to render reasonably effective assistance under prevailing professional norms; and (2) that the deficient performance prejudiced the applicant’s case.”).

“Where counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” Watson v. State, 370 S.C. 68, 72, 634 S.E.2d 642, 644 (2006) (citing Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992)). “Counsel’s performance is accorded a favorable presumption, and a reviewing court proceeds from the rebuttable presumption that counsel ‘rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.’” Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (quoting Strickland, 466 U.S. at 690, 104 S.Ct. 2052). “Accordingly, when counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” Id. (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)). “Courts must be wary of second-guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel.” Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992) (citing Goodson v. United States, 564 F.2d 1071 (4th Cir. 1977)).

This Court will now address each allegation of ineffective assistance of counsel as follows:

**A. Ineffective assistance of counsel for advisement to lie under oath**

During the evidentiary hearing, Applicant testified she was first appointed Timothy Murphy, Esquire, of the Sumter County Public Defender’s Office as counsel. Applicant stated she discharged Mr. Murphy after he told her he did not believe her account of the case and he advised

her to lie under oath about Quinton Brown.

Mr. Murphy has been an attorney for over 30 years, has tried approximately 10 murder cases and has taught and attended many criminal law seminars. Mr. Murphy testified that he was on the case for approximately 10 months, from January until October 24, 2016. During that time Mr. Murphy hired a private investigator, whom he spoke with on numerous occasions. He met with Applicant at least 8 times during the course of the investigation. Attorney Murphy testified that it was difficult to work with Applicant prior to trial and Applicant felt more comfortable with another attorney. The state wanted Applicant to testify against Mr. Brown. Applicant did not accept the plea offer because she stated she was not involved with the murder and did not believe Mr. Brown was involved in the murder. Mr. Murphy testified Applicant probably could have walked had she taken the states' deal but Applicant chose not to.

**B. Ineffective assistant of counsel for failure to receive file in its entirety and for failure to possess the entire file throughout trial**

Applicant alleges Mr. Johnson did not receive the file from Tim Murphy's office until the afternoon of October 27, 2014 and that Mr. Johnson did not have the entire file throughout the trial. Applicant further alleges although Mr. Johnson had basic information about the case he did not, in fact, receive the file from Mr. Murphy's office until October 27, 2014, following the completion of jury selection.

A hearing to relieve Mr. Murphy was put on the record. Mr. Murphy testified he would not take a murder case 2 days before trial due to the seriousness of the allegations, but he has prosecuted cases with 2 days' notice while in the air force. A thorough report was given to Mr. Johnson on Monday of the start of trial. Mr. Johnson accepted the case 2 days before the trial. There was no physical evidence or forensic evidence tying Applicant to the murder. Applicant

however, did give a statement to her cell mate, which along with cell phone evidence were two of the strongest parts of the case. This evidence aligned with the states' allegations. Mr. Murphy testified that he didn't know if Mr. Johnson could have done a better job with the evidence at hand, he further testified that Mr. Johnson received a good result for the acquittal of murder and the charge of accessory after the fact of murder seemed to fit the evidence.

Mr. Johnson testified that he met with the Applicant the Sunday before trial. That he found a ballistic report and could not find anything in the aftermath of this case connecting Applicant with the killers in this case. Under the Strickland test a lawyer is presumed competent and applicant here has not put forth any evidence counsel should have done something different during trial.

**C. Ineffective assistance of counsel for inadequate time to prepare for trial and for lack of preparation during sentencing**

Applicant alleges despite clearly having inadequate time to prepare for any trial, particularly a murder case, the record is silent as to Mr. Johnson ever making a motion to continue the case.

Benny L. Webb of the Sheriff's Department of the City of Lancaster testified that he conducted a thorough investigation based on all of the information gathered from the case. He also testified Mr. Johnson allowed him to assist with juror selection and he did not receive assignments to help with the case thereafter. Mr. Webb further testified Mr. Johnson did not make a motion to continue the case because Judge James was a better trial judge to try the case in front of. Failure to continue or short amount of time with a client is not per se ineffective assistance. Applicant must show that more evidence would have changed the outcome. Attorney Johnson thoroughly cross-examined the witnesses and was competent enough to receive not guilty verdicts for Applicants' charges of murder and conspiracy.

Applicant further alleges, "After the conviction was returned and the court proceeded to sentencing, Mr. Johnson's lack of preparation was evident. He told the court "I am not sure exactly how to argue mitigation in what she did, because I am not sure exactly of the accessory or what she did after the fact from the evidence I am aware of.'"

Mr. Johnson testified he wasn't sure how to argue mitigation. Mr. Murphy having spent 10 months with the case, testified that he didn't know if Mr. Johnson could have done a better job with the evidence at hand. He further testified that based on the evidence Mr. Johnson received a good result for the acquittal of murder and the charge of accessory after the fact of murder seemed to fit the evidence. Furthermore, the court finds as to the Applicant's claim regarding mitigation that Applicant received 12 years on a sentence that carries up to 15 years imprisonment.

#### CONCLUSIONS OF LAW

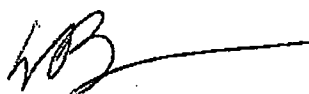
Applicant has failed to provide any evidence that would entitle him to relief. A PCR applicant is not entitled to relief where there is no evidence presented at his PCR hearing to demonstrate how the outcome of his case might've been different if counsel were more prepared. Skeen v. State of South Carolina, 325 S.C. 210, 213-15, 481, S.E.2d 129, 131-32 (1997). This is particularly true here, where Applicant made the voluntary decision to fire Mr. Murphy, following arraignment and hire Mr. Johnson, 3 days prior to trial. Mr. Johnson an experienced criminal attorney was competent enough to successfully defend Applicant on the charges of murder and criminal conspiracy.

Having weighed the credibility of the testifying witnesses and having considered the admissions and explanations offered, the Court cannot find that counsel was not "a reasonably competent attorney" or that his advice was not "within the range of competence demanded of attorneys in criminal cases." The Court finds no professional errors on the part of counsel;

therefore, no prejudice could have resulted from counsel's representation. Therefore, the PCR application is denied as to these allegations.

IT IS THEREFORE ORDERED that the Application for Post-Conviction relief is DENIED and DISMISSED with prejudice.

AND IT IS SO ORDERED.



---

DeAndrea G. Benjamin  
Presiding Judge

November 11, 2018  
Columbia, South Carolina.



# CLEARY LAW

UNRAVELING YOUR LEGAL ISSUES

Cleary Law LLC  
Post Office Box 40086  
Columbia, SC 29240

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**SC Court of Appeals**

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
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