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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

RECEIVED

MAR 29 2012

S.C. Supreme Court

March 29, 2012

The Honorable Daniel E. Shearouse
Clerk, S.C. Supreme Court
Post Office Box 11330
Columbia, SC 29211

Dear Mr. Shearouse:

The following case falls under the 60 day rule for appeals, and the date we received the transcript is listed to the side.

Vernon T. Harrison v. State of South Carolina

3/28/2012

I would appreciate you beginning our time limits from the above date, and if you need additional information, or have any questions please contact me.

Thank you for your assistance in this matter.

Sincerely,

Loriene French
Legal Services Coordinator



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

January 26, 2012

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JAN 26 2012

S.C. Supreme Court

Ms. Karen Ambroziak
Circuit Court Reporter
1083 Langford Road
Blythewood, SC 29016

Dear Ms. Ambroziak:

Please provide us with the following transcript:

Vernon T. Harrison v. State of South Carolina Case #: 10-CP-40-01553

County: Richland Date of Trial: August 29, 2011

Presiding Judge: James R. Barber, III

To ensure prompt payment, please sign and complete the enclosed CID FORM 3500 and include the original criminal case number (Indictment number) where the space is provided.

Please number the lines on the paper from 1-25, and include any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments.

If you are aware of any co-defendants or if the Attorney General's Office has already requested a transcript, please let us know.

Sincerely,


Lorie French
Legal Services Coordinator

cc: S.C. Supreme Court
Attorney General's Office

PCR

The Brooks Law Offices, LLC

Charles T. Brooks, III
Attorney

309 Broad Street
Sumter, South Carolina 29150
Post Office Box 3512, Sumter, SC 29151
Post Office Box 291226, Columbia, SC 29229
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Email: cbrooks@ctbrooks.com

Irma R. Brooks
Attorney

December 16, 2011

South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

RE: Vernon T. Harrison v State of South Carolina
Case No. 2010-CP-40-1553

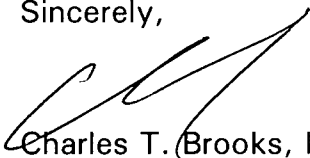
Dear Sir or Madam:

Enclosed herewith you will find the **Notice of Appeal, Order of Dismissal**, along with a **Proof of Service** in reference to the above named Applicant.

If you have any questions or concerns, please contact my office at the number stated above.

With kind regards, I am

Sincerely,



Charles T. Brooks, III
CTB/jlb

RECEIVED

DEC 28 2011

S.C. SUPREME COURT

Enclosed as stated

Cc: Brian T. Petrano , Office of Attorney's General
South Carolina Office of Appellate Defense
Vernon T. Harrison, 333555

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Honorable James R. Barber, III Circuit Court Judge

Case No: 2010-CP-40-1553

Vernon T. Harrison, Appellant
S.C.D.C. No.: 333555

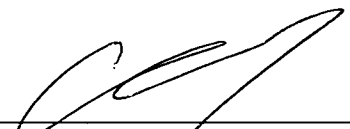
v.

The State Respondent

NOTICE OF APPEAL

Vernon T. Harrison, appeals his Denial for Post Conviction Relief in this case. The Order of Dismissal was imposed and signed by the Honorable James R. Barber, III, on December 13, 2011, which I, Charles T. Brooks, III, received on December 16, 2011.

December 16, 2011



Charles T. Brooks, III
309 Broad Street
Post Office Box 3512
Sumter, South Carolina 29151
(803) 418-5708
Attorney for Appellant

Other Counsel on Record:
Brian T. Petrano, Esquire
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3970

RECEIVED

DEC 28 2011

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Honorable James R. Barber, III, Circuit Court Judge

Case No: 2010-CP-40-1553

Vernon T. Harrison..... Appellant
S.C.D.C. No.: 333555

v.

The State..... Respondent

PROOF OF SERVICE

I, the undersigned, do hereby certify that on this 16th day of December, 2011, I served the foregoing Notice of Appeal, Order of Dismissal, as well as Proof of Service in this matter by depositing a true copy of it in the United States Mail, postage prepaid, on December 16, 2011 addressed to the following as indicated below:

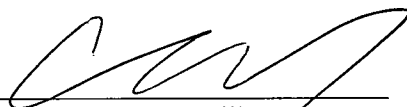
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

South Carolina Office of Appellate Defense
1330 Lady Street, Suite 401
PO Box 11589
Columbia, SC 29211-1589

Office of Attorney's General
Attn: Brian T. Petrano, Esquire
Post Office Box 11549
Columbia, South Carolina 29211-1549

Vernon T. Harrison, 333555
McCormick Correctional Institution
386 Redemption Way
McCormick, South Carolina, 29899

December 16, 2011



Charles T. Brooks, III
Attorney for the Appellant
309 Broad Street
Sumter, South Carolina 29150
(803) 418-5708

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
)
)
Harrison, Vernon T, 333555,)
)
)
Applicant,)
)
)
v.)
)
State of South Carolina,)
)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS

2010CP4001553

ORDER OF DISMISSAL

RICHLAND COUNTY
FILED
2011 DEC 14 AM 10:37
JEANETTE W. McBRIDE
C.C.P. & G.S.

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 8, 2010. The Respondent made its Return on or about October 4, 2010. An evidentiary hearing into the matter was convened on August 29, 2011 at the Richland County Courthouse. The Applicant was present at the hearing and was represented by Charles T. Brooks, III, Esquire. Brian T. Petrano of the South Carolina Attorney General's Office represented the Respondent.

At the hearing, the Applicant testified on his own behalf. The Applicant's plea counsel, Deon O'Neal, Esquire also testified. This Court had before it the records of the Richland County Clerk of Court, the transcript of the proceedings against the Applicant, and the Applicant's records from the South Carolina Department of Corrections.

The Applicant is presently incarcerated following a March 9, 2009 plea to voluntary manslaughter. The Applicant had originally been indicted for Murder (2008GS4012141). The

Honorable J. Michelle Childs sentenced the Applicant, per the negotiated plea agreement, to thirty (30) years.

The Applicant did not appeal his plea.

In the PCR application, the Applicant made the following allegations:

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) See attachment.

(b) _____

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) see attachment.

(b) _____

(c) _____

19. State clearly the relief you seek in filing this application:

sentence ~~was~~ vacated

Attached ISSUES for PCR Application

Ineffective Assistance of Counsel and Involuntary Guilty Plea.

7(a) 10(4)

Applicant claims his guilty plea wasn't voluntary and knowingly given, due to counsel performance fell below and objective standard of reasonableness. In failing to object to the court's personal jurisdiction to act upon the subject matters in the cause of action of indictment 2008-GS-40-12141, and motion the court to dismiss the indictment. Counsel deficient performance resulted in applicant's involuntary guilty plea, because counsel didn't inform him that the charges in the indictment and indictment itself was never properly filed against him in the Circuit Court of Richland County Court of General Sessions; to invest the court with jurisdiction to act upon the subject matters in the indictment in which he involuntarily pleaded guilty to a lesser included offense of manslaughter.

Applicant's guilty plea wasn't voluntarily and knowingly given and he should be allowed to withdraw his guilty plea or the court should vacate his conviction under the guilty plea on grounds he was never charged in the first place by filing of the indictment against him to institute being called before the court to plea guilty before a court that was without authority to act in absence of the indictment being filed. If in the case of any individual against whom a complaint is filed charging such individual with an offense, no indictment or information is filed within the time limit required by 18 § 3161(b) such charge against that individual contained in such complaint shall be dismissed or otherwise dropped. 18 § 3162(a)(1) Counsel was ineffective assistance of counsel under the 6th, 14th U.S.C.A. and SC Const. Article 1 § 14, when his performance fell below an objective standard of reasonableness in failing to file a motion to dismiss or drop the charges in the indictment against applicant on grounds that the indictment containing the offense of murder was never filed against him, with the court pursuant to SCRCrimP Rule 3(c), and pursuant to 18 § 3161(a)(1) and (b) violating the Due Process clause of the 14th U.S.C.A. where formal indictment is condition precedent to valid waiver of presentment of charge to grand jury which is prerequisite to valid guilty plea. State v. Smalls (SC App. 2003) 359 SC 498, 581 S.C. 2d 850 rehearing denied, certiorari granted, reversed 309 SC 343, 613 SC 2d 759. There is no evidence that indictment 2008-GS-40-12141 had been filed to formally charge applicant in the Circuit Court in which was in want of subject matters

in violation of the charge. Absent filing of the indictment, the court was not estopped with the authority to act in accepting applicant's guilty plea to Voluntary Manslaughter absent the charge of Murder being filed against applicant. Counsel deficient performance prejudice applicant of having the court drop or dismiss the indictment, and end resulted in applicant involuntarily given a plea of guilty to a lesser included offense of Murder in order to prejudice applicant of his Constitutional right to (1) an appeal (2) Protection of speedy trial act (3) effective assistance of counsel. Counsel coerced applicant to plead guilty to voluntary manslaughter so that he would waive his rights to challenge violations of his Constitutional Rights by the Government, such as, the right to a Speedy trial under the 6th amendment, his confession was obtained involuntarily in violation of his 4th amendment due process rights, his guilty plea was without understanding the charges against him.

Applicant's guilty plea to voluntary manslaughter was by intimidation and force when he filed a motion to relieve counsel, and court denied motion and would force him to go to trial with counsel who told him he didn't want to go to trial, couldn't handle case and he would be found guilty of Murder and receive life all without even investigating case.

Applicant seeks relief in withdrawal of guilty plea since absent filing of indictment gave court no jurisdiction to accept applicant's plea to voluntary manslaughter 4(b) 10(b)

Applicant's counsel fell below an objective standard of reasonable professional norms in failing to file a motion to dismiss the indictment used before the court on March 9, 2008, on grounds the solicitor failed to take action on arrest warrant I-925687 within 90 days as required by South Carolina Rule of Criminal Procedure Rule 3. On 11-15-2007 the Magistrate issued arrest warrant I-925687 on 11-16-2007 applicant was arrested on this arrest warrant 90 days later the grand jury convened on January 16, 2008 a day later (91 days) the Grand Jury True Billed the indictment outside the allotted time requirement pursuant to SC 2 Crim P Rule 3. Counsel deficient performance in failing to file a motion to dismiss the indictment resulted in counsel coercing and advising applicant to enter a plea to voluntary manslaughter, when he should have informed applicant that the murder indictment was invalid and was never properly filed against him. The omission of this information made his guilty plea involuntary and not knowingly given. Counsel was ineffective in allowing applicant to appear before the court to plea guilty, render personal jurisdiction over to the court without objections knowing complaint had never been filed. see Indictment 2008-GS-40-12191. There is no clock stamp time and date filed by clerk of court. Grand jury findings not published with court. The court cannot consent to jurisdiction over subject matters that has not been properly filed against applicant.

Therefore, under counsel ineffectiveness applicant's plea was involuntary and not knowingly given and he should be allowed to withdraw his guilty plea.

At the evidentiary hearing, Applicant proceeded, in part, on the allegations stated in the application for post-conviction relief.

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 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).

The Applicant explained that he understood the risks of proceeding (resurrecting original murder charge). The Applicant testified that plea counsel never followed up on his claim that this was self-defense. The Applicant testified that he only met with plea counsel a few times, probably about 30 minutes each time. The Applicant explained that plea counsel would not investigate a supposed witness who would testify as to the victim's character. The Applicant explained that his father would testify at trial in support of the Applicant.¹

Plea counsel testified that the State's case was that the victim was shot in the back. Plea counsel explained that they were set for trial, but that the Applicant spoke to his family and decided to take the plea deal. Plea counsel's position was that, at best, this was a heat of passion case but that he risked a murder conviction. (Plea transcript, p. 33). Plea counsel explained that self-defense did not really work. Plea counsel explained that he and the Applicant discussed the

¹ Multiple witnesses, including the Applicant, gave multiple versions of events. (Plea transcript, p. 27 – 33).

situation and that they even tried to reenact the scene. Plea counsel testified that the Applicant at one point tried to claim that the victim was spinning around (to explain the shot(s) to the back). Plea counsel explained that they had an expert and that the expert explained that the only way to support the angles of the shots was if the victim was on the ground, crawling away. Plea counsel explained that the Applicant did tell him that his father's story, if they went to trial, would support the Applicant. However, plea counsel discussed this with the State who explained that although the father was an eyewitness with multiple stories; their position was that he would ultimately support the State's case. Plea counsel disagreed with the Applicant and explained that they met more than two (2) times.

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged 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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). When there has been a guilty plea, the applicant must prove that 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); Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, (citing Strickland). 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. As discussed above, the Applicant has failed to carry his burden in this action. Therefore, this Court finds that the application must be denied and dismissed.

Beyond his review of the undisputed procedural history, this Court finds Applicant's testimony is not credible. Plea counsel's testimony is credible. Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that counsel failed to render reasonably effective assistance under prevailing professional norms. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by counsel's performance.

The Applicant's failure to satisfy his burden of proof is due to the fact that the plea transcript is a valid record of the Applicant's waiver. He was set for trial but decided to accept the plea offer. He expressed his satisfaction with the arrangement at the time. He has not

demonstrated, as is his burden, that plea counsel's performance was deficient for advising the Applicant to accept the plea offer. (Plea transcript, p. 10 – 26).

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Counsel was not deficient in any manner, nor was Applicant prejudiced by counsel's representation. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

Except as discussed above, this Court finds that the Applicant failed to raise the remaining allegations set forth in his application at the hearing and has, thereby, waived them. As to any and all allegations that were or could have been raised in the application or at the hearing in this matter, but were not specifically addressed in this Order, this Court finds Applicant failed to present any probative evidence regarding such allegations. Accordingly, this Court finds that Applicant waived such allegations and failed to meet his burden of proof regarding them. Accordingly, they are dismissed with prejudice. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's

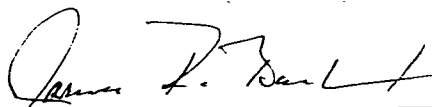
failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

This Court cautions 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. Applicant and counsel are directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

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 Respondent.

AND IT IS SO ORDERED this 13 day of DECEMBER, 2011.



The Honorable James R. Barber, III
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina.

