

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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MAY 06 2019

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Maite Murphy, Circuit Court Judge

Case No.: 2016-CP-10-5451

Otis Robinson, #288206 Appellant

v.

State of South Carolina Respondent

NOTICE OF APPEAL

Appellant appeals the Court's denial of his application for post-conviction relief. Attached is the order from the court dated March 18, 2019 and received April 11, 2019.

May 1, 2019



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PROOF OF SERVICE

I certify that I have served APPELLANT'S NOTICE OF APPEAL by delivering a copy via U.S. Mail First-Class postage prepaid on the 1st day of May, 2019, on the following:

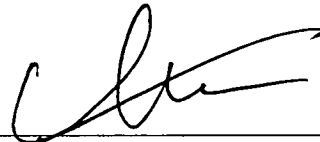
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AG
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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
)
Otis Maurice Robinson,)
)
Applicant,)
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v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2016-CP-10-5451

ORDER OF DISMISSAL

FILED
2019 APR -5 PM 3:42
JULIE J. ARMSTRONG
CLERK OF COURT

This matter is before the Court by way of an application for post-conviction relief ('PCR') filed on October 13, 2016 by Otis Maurice Robinson ("Applicant"). An evidentiary hearing was convened on February 2, 2018 in Charleston County at the Charleston County Courthouse. Applicant was present and represented by Christopher L. Murphy, Esquire. Jessica Kinard, Esquire of the South Carolina Attorney General's Office, represented the State.

Before the Court were the records of the Charleston County Clerk of court regarding the subject conviction, applicant's records from the South Carolina Department of Corrections, and the application.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of corrections pursuant to orders of commitment of the Charleston County Clerk of Court. During its September 2011 term, the Charleston County Grand Jury indicted him for first-degree burglary. He was represented at trial by John Locklair, III. Assistant Solicitors Stephanie Linder and Lindsey Byrd prosecuted the case.

On October 28th and 29th, Applicant appeared in the Charleston County Court of General Sessions before the Honorable R. Knox McMahon. The jury convicted the applicant as indicted

and Judge McMahon sentenced him to life imprisonment without the possibility of parole. Mr. Robinson filed a timely appeal, which was perfected by Lara Caudy of the Office of Public Defense. Following the perfection of the appeal, a brief was submitted pursuant to Anders v. California. The South Carolina Court of Appeals dismissed the appeal on June 8th, 2016 and the remittitur was returned to the circuit court on June 24th, 2016. The State filed a return and partial motion to dismiss on June 27th, 2017.

II. ALLEGATIONS

In his application for post-conviction relief, Applicant alleged ineffective assistance of counsel, failure to challenge the chain of custody of evidence, a denial of due process due to false testimony, and prosecutorial misconduct for failure to challenge a prior conviction.

III. SUMMARY OF RELEVANT TESTIMONY PRESENTED

On direct examination, Applicant testified that he had a 10th grade education and that he had his GED. He further testified that he was not treated for substance abuse or mental illness, but that he was accepted to the South Carolina STRONG drug program. During the Applicant's testimony he alleged that he never spoke with Mr. Locklair about the evidence in the case or the possible defenses. Applicant also testified to the fact that there were communication issues throughout the representation, with both in-person meetings with Mr. Locklair resulting in heated arguments. The Applicant also alleged that that there was no discussion of a potential plea deal, the issue of life without the possibility of parole, and post-trial options.

On cross-examination, Applicant testified that he discussed the evidence with Mr. Locklair, specifically the blood and fingerprints found at the scene. He also testified that he was aware that he was facing life without parole, due to his being served with those papers. The Applicant further testified on cross-examination that he never asked Mr. Locklair to negotiate a

plea on his behalf.

Applicant's counsel was not available to testify, as nobody is aware of his current whereabouts. The State called Assistant Solicitor Stephanie Linder, who was able to testify about her interaction with Applicant's trial counsel. Ms. Linder testified that she extended a plea offer to Applicant's original trial counsel Robert King which was summarily rejected. Ms. Linder also testified that once the plea offer was rejected she served the life without parole notice, which meant that no offers would have been made to Applicant while he was represented by Mr. Locklair. Ms. Linder testified that Mr. Locklair's defense strategy was to try to knock out the dwelling prong of burglary first, she felt that this was likely the strongest defense Mr. Locklair could have presented under the circumstances. Ms. Linder also recalled how strong the case was against the applicant: DNA from blood found on the scene, fingerprint matches, witness identification, and comments by the Applicant stating he was at the scene.

IV. Applicable Law

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (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 [it] 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.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, the applicant must prove that counsel's performance was deficient. *Id.*; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its

“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.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

V. 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).

Ineffective Assistance of Counsel

Applicant argued that his counsel was ineffective for failing to discuss with him the following; possible defenses, the evidence in the case, possible plea deals, post-trial options, and the possibility of life without parole.

Based on the Court’s observation of Applicant’s inconsistent testimony at the hearing, the Court finds Applicant’s testimony not credible. Conversely, the Court finds the testimony provided by Assistant Solicitor Stephanie Linder to be consistent and credible. Applicant

testified on direct examination that Mr. Locklair did not review any of the evidence with him before the trial. The Applicant later testified on cross examination that Mr. Locklair did in fact review evidence with him including the blood and fingerprint evidence found on scene. The Applicant testified on direct examination that he was not aware that if he was found guilty he would be sentence to life without parole. On cross examination, the Applicant testified that he was aware of the life without parole notice and signed it when it was served on him.

The remaining allegations were refuted by the credible testimony of Assistant Solicitor Stephanie Linder. Ms. Linder testified that a plea offer was made to Applicant's prior counsel and that it is office policy that once an LWOP notice has been served no other offers will be made. This Court finds that Applicant's counsel was not deficient for not asking the solicitor to reinstate the offer, because the solicitor would have been under no obligation to revive the rejected offer. The Applicant's allegation of ineffective assistance of counsel due to the failure to communicate the plea offer fails both prongs of the test in Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989).

The Applicant alleged that his counsel was ineffective for failing to discuss with him potential defense strategies in his case and for not recovering the crime scene photos that would have shown it was all a setup. Ms. Linder testified that Mr. Locklair presented the best possible defense when he attacked the dwelling prong of the burglary first charge and that many of the crime scene photographs were entered into evidence along with the photographer being put on the stand. This Court finds that little evidence was presented on the allegation that the chain of custody was not challenged, but that the record reflects that witnesses were called to verify the chain and that the evidence was admitted thereafter. This Court finds that Applicant's trial counsel presented a proper defense and that Applicant failed to show what additional evidence

counsel could have presented to support this defense. Jackson v. State, 329 S.C. 345, 352, 495 S.E.2d 768, 771 (1998).

Finally, the Court finds that this PCR was predominately based on the fact that Mr. Robinson's trial counsel was subsequently disbarred and part of his disbarment was based on this case. Following the trial, Mr. Locklair failed to properly file Mr. Robinson's appeal. Mr. Robinson's representation was eventually taken over by the Division of Appellate Defense. Mr. Robinson was able to file a timely notice of appeal, which was perfected by the Office of Appellate Defense. The solicitor who tried this case testified at the hearing that she never had any problems dealing with Mr. Locklair during trial preparation or during trial. She testified that Mr. Locklair told her he had some issues communicating with his client. Little evidence was presented on the claim that the elements of the offense were not explained. Ms. Linder testified that the burglary first was based on prior convictions and that they had someone from the clerk of court's office testify to that fact. This Court finds the record reflects that an employee from the Clerk of Court's Office testified as to the prior convictions, therefore, there was not prosecutorial misconduct for charging Applicant with Burglary first degree based on those past convictions. Based on the disbarment opinion, it appears that Mr. Locklair was deficient in failing to properly file the appeal. However, because Appellate Defense took over and Mr. Robinson was able to appeal his case, he was not prejudiced. This Court also finds that Applicant has failed to present any testimony concerning his allegation that he was denied due process due to any sort of false testimony presented, therefore, this allegation is dismissed with prejudice as being abandoned by the Applicant.

VI. CONCLUSION

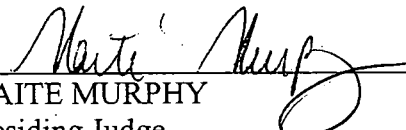
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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

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 18 day of March, 2019.



MAITE MURPHY
Presiding Judge
Ninth Judicial Circuit

St. Hwy, South Carolina

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