WALLER
LAW GROUP

RECEIVED
MAY 17 2019
S.C. SUPREME COURT

May 15, 2019

Daniel E. Shearouse
Clerk of Court
Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

Re: Leroy Glover, Jr. vs. State of South Carolina
C/A No: 2016-CP-38-0110

Dear Mr. Shearouse:

Please find enclosed one (1) original and one (1) copy each of Applicant's Notice of Appeal and Certificate of Service in the above referenced case. I would appreciate you filing the original and returning the clocked copies in the enclosed envelope.

I was appointed to represent Mr. Glover, Jr. in this matter and am also enclosing a copy of the Order of Dismissal. If you have any questions, please do not hesitate to ask. My telephone number is 803-520-7278.

Sincerely,

Jonathan D. Waller

Cc: Benjamin Limbaugh, South Carolina Office of Attorney General

Enclosures

Waller Law Group
1116 Blanding Street, Suite 2B
Columbia, SC 29201

803-520-7278
www.wallerlawgroup.com
jonathan@wallergroupsc.com

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Robert E. Hood, Circuit Court Judge

2016-CP-38-0110

Leroy Glover, Jr., # 314746,

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Leroy Glover, Jr., # 314746, appeals the Order of Dismissal and Granting White Claim denying his Application for Post-Conviction Relief filed November 16, 2017[1] as well as his criminal conviction from indictment no.: 2013-GS-38-1624, issued by the Honorable Robert E. Hood, Presiding Judge, First Judicial Circuit.

Jonathan D. Waller
Waller Law Group
SC Bar No.: 76290
1116 Blanding Street
Suite 2B
Columbia, SC 29201
803-520-7278 (phone)

[1] While the Order of Dismissal was filed November 16, 2017, neither Applicant nor Respondent was ever provided with notice that an Order had been issued. When Applicant was made aware that any Order was issued, without knowing the contents, Applicant made multiple requests to both Respondent and Clerk of Court for a copy of the Order, finally being provided with a copy on May 15, 2019, the same day this Notice of Appeal is being filed.

jonathan@wallergroupsc.com
ATTORNEY FOR PETITIONER

May 15, 2019

Other Counsel of Record:
Benjamin Limbaugh, Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3319

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Robert E. Hood, Circuit Court Judge

2016-CP-38-0110

Leroy Glover, Jr., # 314746,

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Appellant's Notice of Appeal in the above-entitled case has been served upon opposing counsel, Benjamin Limbaugh, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this day, to his office located at P.O. Box 11549, Columbia, SC 29211.

Christopher Leventis

Christopher Leventis

May 15, 2019

STATE OF SOUTH CAROLINA COUNTY OF ORANGEBURG	IN THE COURT OF COMMON PLEAS FOR THE FIRST JUDICIAL CIRCUIT
Leroy Glover, Jr., #314746, Applicant, v. State of South Carolina, Respondent.	2016-CP-38-0110 **ORDER OF DISMISSAL AND GRANTING WHITE CLAIM**

This Court convened an evidentiary hearing into the matter on May 25, 2017, at the Dorchester County Courthouse. Applicant was present at the hearing and represented by Jonathan Waller, Esquire. Ruston W. Neely, Esquire, of the South Carolina Attorney General's Office, represented Applicant.

Applicant's trial counsel, Eduardo Curry (Counsel), Esquire, and Applicant were present and testified. This Court also had the opportunity to listen to their testimony and rule on their credibility. This Court had before it a copy of the trial transcript, the records of the Orangeburg County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the pleadings in this matter. This Court finds as follows:

I. PROCEDURAL HISTORY

Applicant was indicted by the December 2013 term of the Orangeburg County Grand Jury for one count of murder (2013-GS-38-1624.) On September 14-18, 2015, Applicant proceeded to a joint jury trial with his codefendant, at the conclusion of which he was found guilty as indicted. The Honorable Maite Murphy sentenced Applicant to life imprisonment. Applicant did not appeal his conviction or sentence.

II. ALLEGATIONS

Applicant alleged the following grounds in his application:

1. Ineffective Assistance of Trial Counsel
    a. Trial Counsel failed to investigate and research favorable evidence.
    b. Trial Counsel failed to preserve his objection to the alleged codefendant's confession.
    c. Trial Counsel failed to properly perfect the notice of appeal.

III. SUMMARY OF FACTS

Applicant followed the victim into a trailer where he shot and killed the victim, who owed Applicant $93. Afterwards, Applicant and his codefendant took the body and hid it in the woods. Law enforcement used cell phone location data from Applicant's phone to find the victim's body. Jeremy Bradley testified Applicant approached him after law enforcement began their murder investigation and asked him to provide a false alibi. The State also presented a video of Applicant, from a security camera outside a law enforcement officer's office, instructing a friend to give him an alibi and lie to law enforcement. David Williams testified he heard a gunshot and then saw a black male pull away quickly from the scene. Williams identified Applicant's codefendant out of a photo lineup as the driver. Applicant's codefendant introduced defense ex. 1 (letter), a statement allegedly signed by Applicant's codefendant. The letter, signed with Applicant's codefendant's name, purported to confess to the murder. However, an expert witness specializing in handwriting identification testified the letter appeared to be written by Applicant, not Applicant's codefendant. Applicant's codefendant testified Applicant shot the victim.

IV. SUMMARY OF TESTIMONY

Applicant admitted Counsel did a wonderful job at trial. Applicant stated he thought that during the trial and still believed it. Applicant claimed he spoke with Counsel 4 times for 15-20

minutes. He said he never spoke with Counsel about the statements given to law enforcement or the cell phone tower location data evidence. He claimed he gave Counsel names of potential alibi witnesses, but they were never spoken to. He claimed Counsel never discussed hiring a handwriting expert. He asked Counsel to file an appeal, but an appeal was never filed. He didn't read the employment contract with Counsel that specifically stated Counsel was not representing him on appeal.

Counsel testified the codefendant's letter was not provided by the State prior to trial. Applicant admitted to Counsel he had written the letter in order to divert law enforcement's attention. Counsel said he spoke with Applicant more than 4 times for much longer than 15-20 minutes. He went over all the evidence, testimony, and incident scene with Applicant. Applicant told him he and his brother rolled the body up in a carpet and that they staged the body's position. Applicant also told Counsel he fired the bullet that ended the victim's life. Counsel testified he filed a notice of appeal on Applicant's behalf and spoke with Applicant about an appeal.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). "When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove 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). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making

all significant decisions in the case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). An applicant must overcome this presumption to receive relief. State v. Cherry, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). Judicial scrutiny of counsel's performance must be highly deferential, as 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 a particular act or omission of counsel was unreasonable. Strickland, 466 U.S. at 689. "[E]very effort be made to eliminate the distorting effects of hindsight" and to evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689. Accordingly, courts must be wary of second-guessing counsel's tactics. Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

This Court finds that Applicant has failed to satisfy his burden to prove that Counsel's actions in trial were deficient. Applicant also failed to prove he was prejudiced by Counsel's alleged deficiencies. This Court finds Counsel properly prepared for Applicant's trial. This Court finds Counsel elucidated valid trial strategies in defending Applicant and preparing for trial. This Court finds Counsel rendered adequate assistance and exercised professional judgment in his decisions at trial. However, this Court also finds Counsel failed to properly perfect Applicant's appeal. Therefore, this Court dismisses Applicant's claims of ineffective assistance of Counsel during trial, but grants Applicant's request to petition the South Carolina Supreme Court for belated review of his appellate issues. This Court's reasoning follows:

Ineffective Assistance of Counsel

In evaluating allegations of ineffective assistance of counsel, the court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, the court measures an attorney's

performance by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 1989. 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. Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, Counsels' deficient performance must have prejudiced 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. "[E]very effort be made to eliminate the distorting effects of hindsight" and to evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689. Accordingly, courts must be wary of second-guessing counsel's tactics. Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 1992.

1. Failure to investigate.

Applicant failed to show how further investigation by Counsel would have benefited Applicant at trial. Applicant asserts Counsel should have investigated further. This allegation is based purely on speculation. Applicant did not prove what Counsel would have found if he had hired an investigator or initiated further investigation. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668. "The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." State v. Glover, 318 S.C. 496, 498–

499, 458 S.E.2d 538, 540. "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998).

Accordingly, this Court finds Applicant failed to prove Counsel failed to properly investigate. This Court also finds Applicant failed to prove he was prejudiced by Counsel's lack of investigation such that there was a reasonable probability the result of the trial would have been different. Accordingly, this Court denies and dismisses this allegation.

2. Trial counsel failed to preserve his objection to the alleged codefendant's confession.

Counsel was not deficient because he properly preserved his objection to the introduction of the alleged confession of Applicant's codefendant. Tr. 480-482. Counsel also had the trial court note his objection for the record. Tr. 482, l. 17. Applicant argued Counsel's later statement rescinded his objection. "[W]e would agree to that stipulation that the solicitor got that by U.S. mail and turned it over to us." Tr. 607, 18-19. This Court disagrees and believes Counsel properly preserved his objection for appellate review. Counsel stipulated only that the letter was received by the solicitor's office, a fact he did not challenge during his objection. Tr. 481, l. 15-17. During his objection, Counsel challenged the letter based on its lack of foundation and the impossibility of determining the statement's author. Tr. 481. This Court finds Counsel's stipulation did not rescind his timely objection. Accordingly, Counsel was not deficient for failing to preserve his objection because the objection was preserved.

Further, this Court finds the letter's exclusion would not have changed the result of the trial. The State's evidence against Applicant, without the letter, proved his guilt beyond a reasonable doubt. This Court finds there is not a reasonable probability the jury would have decided Applicant's case differently without the letter.

Accordingly, this Court finds Applicant failed to prove Counsel was deficient for failing to preserve his objection. This Court also finds Applicant has failed to prove he was prejudiced such that there was a reasonable probability the result of the trial would have been different. Accordingly, this Court denies and dismisses this allegation.

3. Trial counsel failed to properly perfect the notice of appeal.

A White claim alleges that an applicant desired an appeal of his conviction or sentence and did not receive appellate review due to a failure of his counsel. White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). Pursuant to White, a PCR judge must determine whether the applicant freely and voluntarily waived his appellate rights. If a post-conviction relief judge affirmatively finds that the right to a direct appeal was not knowingly and intelligently waived, the applicant may petition for a writ of certiorari. See Davis v. State, 288 S.C. 290, 291, 342 S.E.2d 60 (1986). Applicant argued he is entitled to a belated appeal pursuant to White.

This Court finds Applicant did not knowingly and voluntarily waive his right to a direct appeal. Trial counsel must ensure a criminal defendant is made fully aware of his appeal rights. White, 263 S.C. at 118, 208 S.E.2d at 39. In the absence of a waiver by the defendant, counsel must initiate an appeal. White, 263 S.C. at 118, 208 S.E.2d at 39. Here, the evidence indicates Applicant desired an appeal. Counsel attempted to file a notice of appeal, but the notice of appeal failed to reach the clerk of court. Therefore, the Court affirmatively finds Applicant requested and was denied an opportunity to seek appellate review. Accordingly, the Court hereby grants Applicant's request for a direct appeal of his conviction pursuant to White v. State.

VI. CONCLUSION

Based on the foregoing, this Court finds and concludes 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 notes Applicant must file and serve a notice of appeal within thirty 30 days from 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 71.1g, SCRCP, provides that if Applicant wishes to seek appellate review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are 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 must be remanded to the custody of the Department of Corrections to complete service of his sentence; and

3. Applicant shall be entitled to seek review of his direct appeal issues.

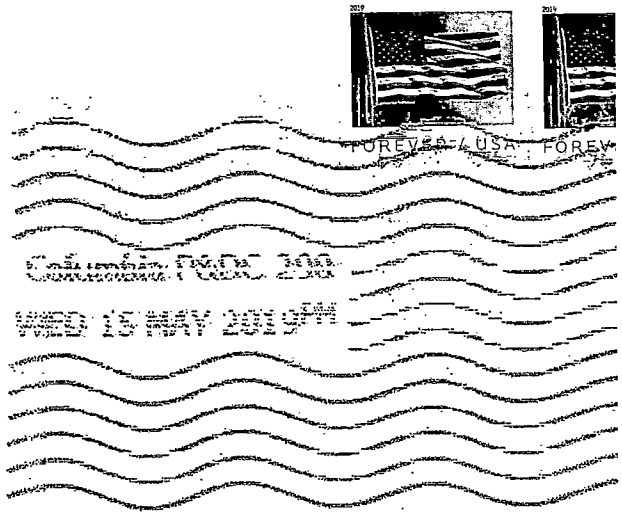
AND IT IS SO ORDERED this 13 day of NOV, 2017.

Re Hood

ROBERT E. HOOD
Presiding Judge
1st Judicial Circuit

Columbia, South Carolina

Columbia, SC 29201



Daniel E. Shearouse
Clerk of Court
Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211