Tommy A. Thomas

ATTORNEY AND COUNSELOR AT LAW

TELEPHONE:
(803) 732-5507
(803) 732-5508

FACSIMILE:
(803) 781-4226

HARRINGTON BUILDING
7588 WOODROW STREET
IRMO, SOUTH CAROLINA 29063

PLEASE REPLY TO:
PO BOX 88
IRMO, SC 29063

INMATE LINE
(803) 732-6542

August 9, 2019

The South Carolina Supreme Court
Clerk, Daniel Shearouse
P.O. Box 11330
Columbia, SC 29211

RE: Sheldon Huger #303794 v. State of South Carolina

Dear Sir or Madam:

Enclosed please find for filing an original and a copy of a Notice of Appeal and Certificate of Service.

Kindly return a clocked copy to me in the enclosed envelope. Please feel free to contact me should you have any questions. Thank you.

Yours truly,

Tommy A. Thomas,
Attorney at Law

TAT/jem
cc: Benjamin Limbaugh, Esq.
Appellate Defense
Sheldon Huger #303793

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Jennifer McCoy, Circuit Court Judge

CASE NO.: 2017-CP-10-4361

Sheldon Huger #303793,..... Appellant,

vs.

State of South Carolina, ...Respondent.

NOTICE OF APPEAL

The Appellant, Sheldon Huger , appeals the Order of the Honorable Jennifer McCoy, dated April 30, 2019. A Motion to Alter or Amend pursuant to Rule 59 (e) was timely filed and an Order Denying Applicant's Motion Pursuant to Rule 59 (e), SCRCP was signed by The Honorable Jennifer McCoy on July 23, 2019 and filed on July 26, 2019. Appellant received written notice of entry of this order on July 29, 2019.

Respectfully submitted,

Tommy A. Thomas
Attorney for Appellant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

August 9, 2019

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Jennifer McCoy, Circuit Court Judge

CASE NO.: 2017-CP-10-4361

Sheldon Huger #303793,..... Appellant,

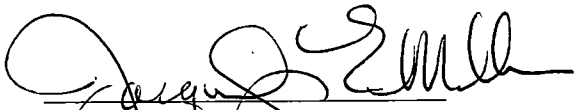
vs.

State of South Carolina, ...Respondent.

CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, secretary to Tommy A. Thomas, Attorney for the Applicant hereby certify that I placed in the United States Mail, a copy of a Notice of Appeal, with postage prepaid and the return address clearly shown on said envelope to Benjamin Limbaugh, Esq. at:

Benjamin Limbaugh, Esq.
Attorney General's Office
P.O. Box 11549
Columbia, SC 29211-1549



Jacquelyn E. Miller
Secretary to Tommy A. Thomas
Attorney for Applicant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

Irmo, SC
August 9, 2019

FILED

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON 2019 APR 30 PM 2:56	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
SHELDON HUGER, S.C.D.C. No. 303793 Applicant, v. STATE OF SOUTH CAROLINA, Respondent.	JULIE J. ARMSTRONG CLERK OF COURT Case No. 2017-CP-10-4361 **ORDER OF DISMISSAL**

Sheldon Huger ("Applicant") is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of Charleston County Clerk of Court.

Lorelle Proctor, Esquire, of the Charleston County Public Defender's Office, represented Applicant. Assistant Solicitor Ted Corvey prosecuted the cases. On February 1, 2017, Applicant appeared in the Charleston County Court of General Sessions before the Honorable R. Markley Denis, Jr., circuit court judge, proceeded to trial. Following pre-trial hearings, Applicant elected to forego his right to trial and entered a guilty plea as indicted. Pursuant to negotiations with the State, Judge Dennis sentenced Applicant to twenty-five years imprisonment. Applicant did not appeal his guilty plea or sentence.

In his *pro se* application for post-conviction relief, Applicant alleges he is being held in custody unlawfully due to the following allegations:

1. "I did not attend a preliminary hearing;"
2. "Ineffective assistance of counsel;"
3. "Mental health disabilities;"
4. "My case prejudiced from State vs. Muldrow and State v. Gillespie, Travis;
5. "My plea arrangement was enhanced to armed robbery and should have been lessened to strong armed robbery-I did not have a weapon."

In his attached pages, Applicant gives facts to support these allegations by alleging what counsel did or did not do adequately in regard to each of these allegations. Therefore, respondent interprets all of these allegations as ineffective assistance of counsel.

Facts of Case

On December 16, 2015, Applicant entered the First Citizens Bank located at 5090 Dorchester Road in Charleston County and approached the teller counter. He passed a note to the teller indicating he was armed with a gun and demanding money. The teller acknowledged the note and began removing monies from her drawer until Applicant instructed her to stop. The teller then placed the monies on the counter and Applicant took the sum of currency. While this was occurring, Detective Riedel of the North Charleston Police Department was at the bank conducting other business and observed Applicant's actions. Detective Riedel approached Applicant, announced himself as an officer, and asked Applicant to stop. Applicant refused to comply and took off on foot. A foot chase ensued, after which Applicant was apprehended nearby. Detective Riedel positively identified Applicant, who had the currency on his person at the time of arrest. During its August 2016 term of court, the Charleston County Grand Jury indicted Applicant for entering a bank with intent to steal (2016-GS-10-4915).

Findings of Facts and Conclusions of Law

This Court has thoroughly reviewed the record in its entirety. Additionally, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses presented, which allowed the Court to scrutinize the credibility presented. 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).

Applicant has alleged numerous instances of ineffective assistance of counsel against trial counsel, William Brunson. Each allegation is addressed fully below.

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The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008).

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, 466 U.S. 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland does not guarantee perfect representation, only a "'reasonably competent attorney.' " 466 U. S. at 687 (quoting McMann v. Richardson, 397 U. S. 759, 770 (1970)); Representation is constitutionally ineffective only if it "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair trial. Strickland, 466 U.S. at 686. Just as there is no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities. See generally Id.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, an 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 an attorney provided representation within the range of competence required in criminal cases. Butler, 286, 442, 334

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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.

Although courts may not indulge "post hoc rationalization" for counsel's decision making that contradicts the available evidence of counsel's actions, Wiggins, 539 U.S. at 526–527, neither may they insist counsel confirm every aspect of the strategic basis for his or her actions. There is a "strong presumption" that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than "sheer neglect." Yarborough v. Gentry, 540 U. S. 1, 8 (2003) (per curiam). After an adverse verdict at trial even the most experienced counsel may find it difficult to resist asking whether a different strategy might have been better, and, in the course of that reflection, to magnify their own responsibility for an unfavorable outcome. Strickland, however, calls for an inquiry into the objective reasonableness of counsel's performance, not counsel's subjective state of mind. Id. at 688; Harrington v. Richter, 562 U.S. 86 (2011)

With respect to prejudice, an applicant must demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. at 694. It is not enough "to show that the errors had some conceivable effect on the outcome of the proceeding." Id. at 693. Counsel's errors must be "so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." Id. at 687; Harrington, 562 U.S. 86.

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"Surmounting Strickland's high bar is never an easy task." Padilla v. Kentucky, 559 U.S. 356, 371 (2010). An ineffective assistance of counsel claim can function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial, and so the Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. Strickland, 466 U.S. at 689–690. Even under de novo review, the standard for judging counsel's representation is a most deferential one. Unlike a later reviewing court, the attorney observed the relevant proceedings knew of materials outside the record and interacted with the client, with opposing counsel, and with the judge. It is "all too tempting" to "second-guess counsel's assistance after conviction or adverse sentence." Id. at 689; see also Bell v. Cone, 535 U. S. 685, 702 (2002); Lockhart v. Fretwell, 506 U. S. 364, 372 (1993). The question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. Strickland, 466 U.S at 690.

In assessing prejudice under Strickland, the question is not whether a court can be certain counsel's performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently. Wong v. Belmontes, 558 U. S. 15 (2009); Strickland, 466 U.S. at 693. Instead, Strickland asks whether it is "reasonably likely" the result would have been different. Id. at 696. This does not require a showing that counsel's actions "more likely than not altered the outcome," but the difference between Strickland's prejudice standard and a more-probable-than-not standard is slight and matters "only in the rarest case." Id. at 693, 697. The likelihood of a different result must be substantial, not just conceivable. Id. at 693; Harrington, 562 U.S. 86.

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Based on this standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing any constitutional ineffectiveness of counsel as to any of his various allegations. Applicant's allegation is addressed fully below:

Applicant was not present at preliminary hearing

At the evidentiary hearing, Applicant testified that he was not present at any preliminary hearing before he pled guilty. This Court finds that this allegation must be denied and dismissed with prejudice. First, regarding the Entering a Bank with Intent to Steal (2016-GS-10-04915), Applicant was properly indicted by the Charleston County Grand Jury during the August 9, 2016 term. This Court finds that Counsel was not deficient for failing to request a preliminary hearing on Applicant's behalf. Furthermore, this Court finds that Applicant was not prejudiced by Counsel's alleged deficiency, as indictment by a grand jury constitutes a finding of probable cause and thus avoids the need for a preliminary hearing. See State v. McClure, 277 S.C. 432, 289 S.E.2d 158 (1982) (finding that indictment constitutes finding of probable cause and thus avoids need for preliminary hearing). Therefore, there is no reasonable likelihood that Applicant's charge would have been dismissed had Counsel moved for a preliminary hearing. Additionally, Applicant's acceptance of the State's favorable plea negotiation and his silence at the guilty plea proceeding regarding his desire for a preliminary hearing constitutes a waiver. Bonnette v. State, 277 S.C. 17, 282 S.E.2d 597 (1981).

Allegation that counsel was deficient for failing to address Applicant's mental health disabilities

At the evidentiary hearing, Applicant testified that he takes prescription medication for mental health issues. Applicant testified that he did not understand the proceedings during his pretrial hearings. Applicant also testified that he understood the charges against him, the

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negotiations, and his discussions with counsel. Counsel testified that she had Applicant evaluated for competency and that he was found to be competent to stand trial. Counsel also testified that she believes that Applicant understood all of her conversations with him. Applicant's mental health concerns were also addressed by the plea court on the record and the Court found that Applicant understood the proceedings and was making a knowing, intelligent, and voluntary decision to plead guilty. This Court finds that counsel acted reasonably within professional norms by having Applicant evaluated for competency. This Court finds this allegation is without merit and dismisses it with prejudice.

Allegations relating to Armed Robbery

This Court finds that the record and testimony of counsel directly refute any allegations relating to Applicant being charged with armed robbery. The record indicates that Applicant was not in fact indicted for armed robbery, but was indicted as to entering a bank with intent to steal. Further, any allegations relating to potentially being charged with armed robbery are not relevant, because Applicant ultimately plead guilty to the charge of entering a bank with intent to steal. Applicant contends his plea was enhanced to an armed robbery, the record directly refutes this assertion. Applicant also contends that certain case law may have helped him were he to have been tried as to armed robbery, however, that allegation was made moot by his decision to plead guilty. This Court finds that there is no factual basis for Applicant's allegations regarding concerns related to any potential armed robbery charge and therefore dismisses these allegations with prejudice.

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III. CONCLUSION

Based on all the forgoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient, nor was Applicant prejudiced by Counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty 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:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 30th day of April, 2019.

JENNIFER MCCOY
Presiding Judge
Ninth Judicial Circuit

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CC
AG
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STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**C/A NO.: 2017-CP-10-4361**
COUNTY OF CHARLESTON	)	
	)	
Sheldon Lamarc Huger, #303793,	)	**ORDER**
	)	
Applicant,	)	**DENYING APPLICANT'S MOTION TO ALTER OR AMEND THE COURT'S FINAL ORDER OF APRIL 30, 2019**
	)	
	)	
vs.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

FILED
2019 JUL 26 PM 12:50
JULIE J. ARENDS
CLERK OF COURT

THIS MATTER came before the court by way of a post-conviction relief (PCR) application filed on August 25, 2017. An evidentiary hearing into the matter was convened on March 18, 2019, at the Charleston County Courthouse. Applicant was present at the hearing and was represented by Tommy Thomas, Esquire. Respondent was represented by Assistant Attorney General Benjamin Limbaugh of the South Carolina Attorney General's Office.

Before this court were the records of the Charleston County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the record on appeal, Applicant's appellate records, the State's return, and Applicant's PCR application.

By written order dated April 30, 2019, this court determined that the Applicant failed to prove he is entitled to post-conviction relief based on his allegation of ineffective assistance of counsel, among other claims. After hearing all of the testimony presented at the evidentiary hearing, as well as arguments from both parties, this court denied and dismissed Appellant's application with prejudice. The Applicant filed a Motion to Alter or Amend pursuant to Rule 59(e) SCRCP on May 21, 2019.

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After considering the record in this matter, the arguments of counsel, and the applicable legal authorities, this court respectfully **DENIES** the Applicant's Motion to Alter or Amend and reaffirms its decision in the Order of April 30, 2019.

IT IS, THEREFORE, ORDERED that the Applicant's Motion to Alter or Amend the court's April 30, 2019 Order is hereby denied.

July 23, 2019
Charleston, South Carolina

Honorable Jennifer B. McCoy
Judge, Ninth Judicial Circuit

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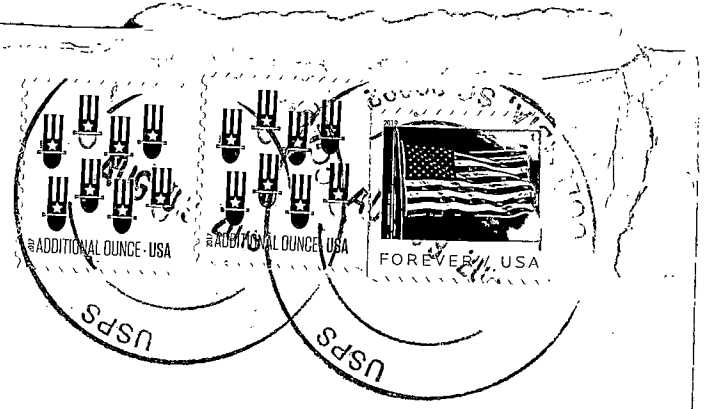
Tommy A. Thomas, P.C.
ATTORNEY AND COUNSELOR AT LAW
HARRINGTON BUILDING
POST OFFICE BOX 88
IRMO, SOUTH CAROLINA 29063



The South Carolina Supreme Court
Clerk, Daniel Shearouse
P.O. Box 11330
Columbia, SC 29211