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November 26, 2019

Clerk of Court, South Carolina Supreme Court
Case # 2018-CP-43-1440

Tervin Goodman, #329973 v. State of South Carolina

Please see the included Notice of Appeal. I have also forwarded by separate mail copies to:

The Sumter County Clerk of Court
The Office of the Attorney General of South Carolina
SC Office of Indigent Defense / Commission of Indigent Defense
The Honorable Kristi F. Curtis

Please file the included NOTICE OF APPEAL for the case captioned.

Attorney Timothy L. Griffith was appointed as PCR Council and not retained and will not be handling the Appeal.

Thank You,



Timothy L. Griffith, Esquire

RECEIVED

DEC 05 2019

S.C. SUPREME COURT

**NOTICE OF APPEAL FROM A PCR DENIAL BY THE COURT OF
COMMON PLEAS**

THE STATE OF SOUTH CAROLINA
In Supreme Court of SC

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge

Case # 2019-CP-43-1440

RECEIVED

DEC 05 2019

S.C. SUPREME COURT

The State,

Respondent,

v.

Tervin Goodman

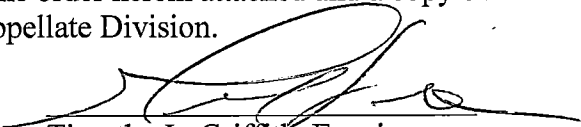
Appellant.

NOTICE OF APPEAL

Tervin Goodman appeals the decision of the Court, on March 27, 2019, where Mr. Goodman was denied his request for Post Conviction Relief. Mr. Goodman was represented at the hearing by Timothy L. Griffith, Attorney at Law who files this notice on behalf of the Appellant. The order herein attached and a copy of which is also forwarded to the SCCID Appellate Division.

Dated

11/26/19


Timothy L. Griffith, Esquire
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Sumter, South Carolina 29150
Telephone: (803)607-9087
Attorney for Appellant (relieved)
Will not be representing on appeal

Other Counsel of Record:
Janell H. Gregory, Esquire
Assistant Attorney General
South Carolina Attorney General's Office
P.O. Box 11549
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PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge

Case # 2018-CP-43-1440

The State,

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Appellant.

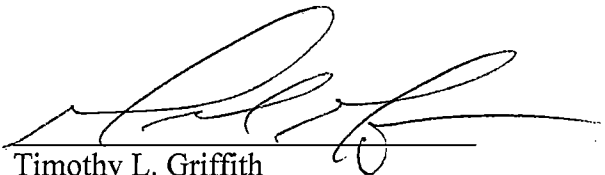
PROOF OF SERVICE

RECEIVED
DEC 05 2019
S.C. SUPREME COURT

I certify that I have served the Notice of Appeal on the Office of the Attorney General of South Carolina, PCR Division, by U.S. Postal Service, postage prepaid, to P.O. Box 11549, Columbia, S.C. 29211, on November 26, 2019

I received a copy of the Notice of Appeal
on this ____ day of _____, 20____

Office of the Attorney General
PCR Division



Timothy L. Griffith
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Telephone: (803) 607-9087
Attorney for Appellant

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Tervin Goodman, #329973,)

2018-CP-43-1440

Applicant,)

ORDER OF DISMISSAL

v.)

State of South Carolina,)

Respondent.)

This matter comes before the Court by way of an application for post-conviction relief filed on August 6, 2018, by Tervin Goodman (Applicant). The State (Respondent) filed a Return and Partial Motion to Dismiss on October 24, 2018, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on March 27, 2019, at the Sumter County Courthouse. Applicant was present at the hearing and represented by Timothy Griffith, Esquire. Assistant Attorney General Janell H. Gregory of the South Carolina Attorney General's Office appeared on behalf of Respondent. At the hearing, Applicant testified on his own behalf. Timothy Murphy, Esquire (Counsel) also testified. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof and denies this application.

I. PROCEDURAL HISTORY

The records before this Court establish Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Sumter County Clerk of Court's order of commitment. In October 2009, the Sumter County Grand Jury indicted Applicant for murder, first-degree burglary, and grand larceny (2009-GS-43-1120). Applicant was seventeen years old at the time the crime was committed. Charles T. Brooks, III, Esquire, represented Applicant on the charges. Assistant Solicitor John P. Meadors, Esquire, prosecuted the case. On September 19, 2011,

Applicant pled guilty to murder and first-degree burglary before the Honorable Howard P. King. The grand larceny charge was dismissed in exchange for Applicant's guilty plea. Judge King sentenced Applicant to life imprisonment. Applicant did not appeal his guilty plea or his sentence.

2012-CP-43-922

Applicant filed an application for post-conviction relief on May 16, 2012, alleging he was being held in custody unlawfully based on the following allegations:

1. Ineffective Assistance of Counsel
 - a. "Conflict of interest do to ineffective counseling."
 - b. "Failed to Consult with Defendant."

Respondent filed its Return on August 2, 2012. An evidentiary hearing was convened at the Sumter County Courthouse on March 17, 2016, before the Honorable Brooks P. Goldsmith. At the hearing, Applicant challenged the constitutionality of his life sentence for first-degree burglary and waived all other grounds for relief. He specifically argued that his life sentence for first-degree burglary was unconstitutional pursuant to Graham v. Florida,¹ and that he was entitled to a new sentencing proceeding where a life sentence was prohibited. Respondent consented to the relief sought, and Judge Goldsmith vacated Applicant's sentence for first-degree burglary and granted him a new sentencing proceeding. The order granting Post-Conviction Relief was filed on April 7, 2016.

On October 5, 2017, Applicant appeared at the Florence County Courthouse before the Honorable William H. Seals, Jr., for his resentencing hearing. Timothy Murphy, Esquire represented him at the hearing. Solicitor Ernest Finney, III, and Lisa Beharry, of the Third Circuit Solicitor's Office represented the State. At the hearing, Applicant requested resentencing for his first-degree burglary charge, as well as an Aiken v. Byars² hearing for his murder charge.

¹ 560 U.S. 48 (2010) (holding the Eighth Amendment prohibits the imposition of a life without parole sentence on juvenile offenders who did not commit homicide).

² 410 S.C. 534, 765 S.E.2d 572 (2014) (holding life without parole sentences for juveniles without individualized consideration of their youth constituted cruel and unusual punishment).

At the resentencing hearing, Counsel presented testimony from Jim Manning, a social worker and expert witness in social history and child development. Manning testified about Applicant's developmental levels, family and personal background, his maturity level, and his potential for improvement over time. (Resentencing Hearing Tr. 4-17.) The State presented testimony from Detective Irene Culick, who explained the circumstances of the crime and resulting investigation, as well as her interviews and interactions with Applicant. (Resentencing Hearing Tr. 28-43.) Counsel objected to Culick's testimony about her personal opinion of Applicant's thoughts and motives. (Resentencing Hearing Tr. 39.) The State further presented testimony from Gayle Wenzel, the victim's daughter, Joseph Horger, the victim's son, and Charles Horger, the victim's brother.

After considering the testimony and arguments presented, Judge Seals sentenced Applicant to life imprisonment for murder and a consecutive thirty years' imprisonment for first-degree burglary. Applicant did not appeal his sentence.

SUMMARY OF FACTS

Applicant entered the victim's home on June 8, 2008, to commit a robbery. The evidence suggests that while he was looking around the house, the victim appeared, and Applicant killed her by hitting her over the head with a ceramic vase. The victim's blood was found in various places around the house, and her body was found downstairs with a severe head injury and a broken vase nearby. Applicant then continued his robbery, taking a large amount of cash from a safe, her cell phone, and the victim's credit card, then leaving in the victim's car. Applicant essentially admitted his guilt to his friends and family, and his fingerprints were found on the murder weapon, the stolen credit card, and the stolen vehicle. Applicant freely used the victim's stolen car and cell phone after the murder. (GP Tr. 12-26.)

III. ALLEGATIONS RAISED

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "My attorney presented documents in court stating that he gave me tests but he really presented old filed from 2004."
 - b. "My attorney failed to object on several occasions. Det. Culich, who is not a detective on my case was allowed to get on the stand and blatantly lie on me. My lawyer failed to object when I asked could he, during her testimony."
 - c. "She painted (Det. Irene Culich) a picture of the crime and testified in court what I did but don't have any evidence to prove."
2. "Aiken vs. Byars"

"Aiken vs. Byars clearly states that children are capable of reform. Sentencing us to LWOP sentences is symbolic to giving us a slow death sentence, being that we're never given another chance at society, even after serving the many years."
3. Failure to Appeal

"My attorney told me we couldn't appeal."

On March 27, 2019, an evidentiary hearing was convened. Respondent renewed its motion to dismiss the Aiken v. Byars claims, which was granted. Applicant proceeded with the hearing on the allegations of ineffective assistance of counsel, and failure to file an appeal.

II. TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

Applicant's Testimony

During the evidentiary hearing, Applicant testified on his own behalf. Applicant testified he discussed the risks of proceeding with his post-conviction relief hearing with his attorney and made the decision to go forward. Applicant testified during his resentencing hearing that Counsel never objected to the testimony of Det. Culick. Applicant testified Det. Culick testified to things she predicted, but which were not true. Applicant testified that none of his lawyers objected to the things Det. Culick said in her testimony during his guilty plea or his resentencing hearing. Applicant further testified he would like a new resentencing hearing because Counsel failed to file

an appeal on his behalf. Applicant testified he asked Counsel to file an appeal during the resentencing hearing. Applicant testified the prosecutor was also lying during the resentencing hearing and he feels Counsel should have objected. Applicant testified that, at the resentencing hearing, his lawyer admitted into evidence tests results from when Applicant was fourteen. He stated neither Murphy nor his previous attorney ever had him retested but instead relied on old testing from his school records. Applicant object to the use of the "old" tests because he feels he has changed since then.

Counsel's Testimony

Counsel also testified at the post-conviction relief hearing. Counsel testified he has been practicing law for over thirty years. Counsel testified he represented Applicant's brother at the time Applicant pled guilty. Counsel testified that when Aiken v. Byars³ decision came down, the Office of Indigent Defense identified a number of individuals who were serving life without the possibility of parole and were eligible for a Byars hearing. Counsel testified he and another attorney split the list and, since he was familiar with Applicant's case, he represented Applicant. Counsel testified he obtained the necessary waivers in order to represent Applicant for the resentencing hearing. Counsel testified he met with Applicant two times at the prison.

Counsel testified Det. Culick's testimony was relevant to the resentencing hearing and was substantially consistent with what she testified to at the guilty plea. Counsel testified there was an occasion where Det. Culick "went off on a tangent" and he objected at that time. Counsel testified he prepared the mitigation for Applicant's case like a death penalty case. Counsel testified he talked to Applicant, his teachers, and family. Counsel testified he hired two different experts: a mitigation expert to review all of the pertinent records, and a social worker who would testify at

³ 410 S.C. 534, 765 S.E.2d 572 (2014).

the hearing Counsel testified the testing records from Applicant's youth help explain Applicant's state of mind, mental health challenges, and learning issues, which were all relevant to paint a picture of Applicant. Counsel testified teenagers are not as mature as adults, so the tests were relevant for the hearing.

Counsel testified he presented all of the favorable information he could on Applicant's behalf. Counsel testified Applicant's SCDC record was awful. Counsel testified he discussed Applicant's right to appeal during his representation, but told him he did not have any legal issues to appeal. Counsel testified he would have filed a notice of appeal on Applicant's behalf had he requested an appeal.

On cross-examination, Counsel testified he never told Applicant he could not appeal his case, but he did tell him he did not have a legal basis to appeal. Counsel testified he does not have any documentation indicating he told Applicant this because he gives the same speech to each of his clients. Counsel testified he is very careful about discussing this with each client because he had a previous client file a post-conviction relief application on him for failing to discuss his right to appeal. Counsel testified if Applicant had asked him to appeal, he would have filed a notice of appeal to preserve Applicant's rights. Counsel testified under South Carolina rules, Applicant's appeal would likely have been dismissed because he would have had to provide reasons for his appeal and Applicant had no meritorious grounds for his appeal.

APPLICABLE LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his 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 the trial

cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 300 S.C. 115. First, the applicant must prove counsel’s performance was deficient. Id. Under this prong, courts measure an attorney’s performance by its “reasonableness under prevailing professional norms.” Id. (citing Strickland, 466 U.S. at 688). Second, any 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, 300 S.C. at 115.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This Court viewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the plea transcript, and Applicant’s records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

This Court finds Applicant has failed to meet his burden of proving he is entitled to post-conviction relief on any of his allegations of ineffective assistance of counsel. Applicant has failed to prove both deficiency on the part of Counsel and any prejudice therefrom. Furthermore, after observing the witnesses and passing on their credibility, this court finds Counsel's testimony to be credible. By contrast, this Court finds Applicant's testimony lacks credibility.

Counsel's alleged failure to present proper mitigation

Applicant alleges Counsel was ineffective for failing to present timely information during the resentencing hearing. Applicant alleges Counsel presented tests from 2004 when Applicant was fourteen and he has changed since then.

Counsel testified the tests were material in order to show Applicant's state of mind, mental health issues, and learning challenges. Counsel testified he hired a social worker to be an expert witness in Applicant's social history and child development. Counsel testified the expert reviewed Applicant's family history, education history, and was able to provide expert testimony at the hearing. Counsel testified he presented all favorable information to the court he could, but that Applicant's SCDC record was awful.

This Court finds credible Counsel's testimony that he prepared favorable mitigation on Applicant's behalf at his resentencing hearing, which included testing conducted with Applicant from 2004. Counsel's expert testified regarding Applicant's family history, education, and maturity, which was relevant to the resentencing proceeding. This Court finds Applicant has failed to establish how Counsel was deficient as he has failed to show any favorable mitigation that Counsel failed to present. Applicant has also failed to establish any resulting prejudice from Counsel's alleged deficiency as he has failed to show what Counsel could have presented that would have impacted the sentence imposed by the resentencing court. Based on the foregoing,

Applicant has failed to meet his burden and this allegation must be denied and dismissed with prejudice.

Counsel failed to object to Det. Culick's testimony

Applicant testified Counsel failed to object to Det. Culick's testimony during the resentencing hearing. Applicant testified Det. Culick's testimony was not true and not supported by evidence. Applicant testified Counsel should have objected.

Counsel testified most of Det. Culick's testimony was relevant to the resentencing hearing and was substantially consistent with what was presented at the guilty plea hearing. Counsel testified Det. Culick did "go off on a tangent" during her testimony and he objected at that time.

The resentencing hearing transcript shows Det. Culick's testimony was relevant to provide Judge Seals with background information on the case and her investigation. The transcript also shows Counsel did properly object when Det. Culick attempted to offer her opinion of Applicant during her testimony. Therefore, this Court finds Counsel was not deficient in his handling of Det. Culick's testimony. Applicant has also failed to establish any prejudice from Counsel's alleged deficiency. Therefore, this allegation is denied and dismissed with prejudice.

Aiken v. Byars

Applicant fails to state any grounds under Aiken v. Byars, other than a generalized statement of the holding in the case. A review of the transcript of the resentencing hearing reveals that the resentencing judge considered all of the relevant factors, including the age and maturity of Applicant at the time he committed the crime, his maturity level, his ability to perceive risks and consequences, his family and home environment, the extent of his participation in the crime, the incompetencies associated with youth, Applicant's ability to deal with the police and with his lawyer, his I.Q., and the possibility of his rehabilitation. After carefully evaluation the testimony and each of the relevant factors, the resentencing judge

sentenced Applicant to a term of imprisonment within his statutory discretion. Applicant fails to state any grounds for relief under Aiken v. Byars, and after reviewing the transcript this court finds none.

Counsel failed to file an appeal

Applicant alleges Counsel was ineffective for failing to file an appeal on his behalf. The United States Supreme Court has rejected a bright-line rule requiring Counsel to consult with the defendant regarding an appeal in every case. Roe v. Flores-Ortega, 528 U.S. 470, 480 (2000). Instead, "counsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing." Id.

Here Counsel testified Applicant did not ask him to appeal, nor did Counsel believe Applicant had any meritorious claims to appeal. Counsel also testified his usual practice is to discuss his client's right to appeal during his representation. This Court finds Applicant has failed to meet his burden of proving he did not voluntarily and intelligently waive his right to appeal. This Court finds Counsel's testimony very credible, whereas Applicant's testimony is not credible. Applicant has failed to establish how Counsel was deficient or any resulting prejudice from the alleged deficiency. Therefore, this allegation is denied and dismissed with prejudice.

CONCLUSION

Based on the foregoing, the 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.

The Court notes Applicant must file and serve a notice of appeal within thirty days from post-conviction relief 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), SCRCR, provides that if Applicant wishes to seek appellate review, post-conviction relief 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 THAT:

1. The application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 15th day of April, 2019.

Kristi Curtis
KRISTI F. CURTIS
Presiding Judge
Third Judicial Circuit

Spartanburg, South Carolina

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Supreme Court of South Carolina
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