

TURNER PADGET

TURNER PADGET GRAHAM & LANEY P.A.

PCR

CHARLESTON
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FLORENCE
GREENVILLE
MYRTLE BEACH

Arthur E. Justice, Jr.

Writer's Direct Dial #843-656-4412
Writer's Direct Fax #843-413-5819
E-Mail: ajustice@turnerpadget.com

April 18, 2012

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

RECEIVED

APR 19 2012

S.C. SUPREME COURT

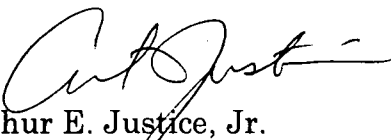
Re: *Sylvester Davis v. State of South Carolina*
Docket No.: 2011-CP-21-2537
Our File No.: 1.01338

Dear Mr. Shearhouse:

Please find enclosed the original and one copy of a Notice of Appeal in regards to the above-referenced matter. Please file the original in your office and return a clocked copy to us in the enclosed self-addressed, stamped envelope. I was appointed to represent Mr. Davis and understand the \$100.00 filing fee is waived in such circumstances. If I am incorrect in that regard, please let me know immediately so that I can forward the fee in time to protect Mr. Davis' right to appeal. By copy of this correspondence to counsel for the Respondent, we are herewith serving him with this Notice of Appeal.

Sincerely,

TURNER, PADGET, GRAHAM & LANEY, P.A.


Arthur E. Justice, Jr.

AEJ,jr/dr

cc: David Spencer, Esquire
Mr. Sylvester Davis

BUSINESS • LITIGATION • SOLUTIONS

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THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM FLORENCE COUNTY

Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

CASE NO.: 2011-CP-21-2537

Sylvester Davis, 306869,

Applicant,

vs.

State of South Carolina,

Respondent.

NOTICE OF APPEAL

Sylvester Davis appeals the Order of Dismissal from his Post-Conviction Relief Hearing, which was entered on April 13, 2012 by the Honorable William H. Seals, a copy of which is attached hereto.

April 18, 2012

Arthur E. Justice, Jr., Esquire
TURNER PADGET GRAHAM & LANEY
319 South Irby Street
Post Office Box 5478
Florence, SC 29502
ATTORNEY FOR APPLICANT

Other Counsel of Record:
David Spencer, Esquire
Assistant Deputy Attorney General
State of South Carolina
Post Office Box 11549
Columbia, SC 29211-1549

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APR 19 2012

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
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APPEAL FROM FLORENCE COUNTY

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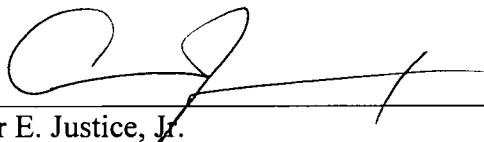
State of South Carolina,

Respondent.

PROOF OF SERVICE

The undersigned certifies that he is employed with the law firm of Turner, Padgett, Graham & Laney, P. A., attorneys for Appellant Sylvester Davis and that he has mailed one copy of Appellant's Notice of Appeal to the address shown this 18th day of April 2012, with proper postage attached thereto:

David Spencer, Esquire
Assistant Deputy Attorney General
State of South Carolina
Post Office Box 11549
Columbia, SC 29211-1549



Arthur E. Justice, Jr.

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APR 19 2012

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
IN THE COURT OF COMMON PLEAS

FORM 4
FILED

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP2102537

2012 APR 16 PM 12:19

Sylvester Davis

State of South Carolina
CONNIE REEL SHEARS
CCCPI & GS
FLORENCE COUNTY, SC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

RECEIVED

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL. APR 18 2012

IT IS ORDERED AND ADJUDGED:

See attached order; (formal order to follow)

S.C. SUPREME COURT Statement of Judgment by the Court

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk:

CERTIFIED: A TRUE COPY
Clerk of Court
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.



Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge	Judge Code	4/16/2012 Date
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For Clerk of Court Office Use Only

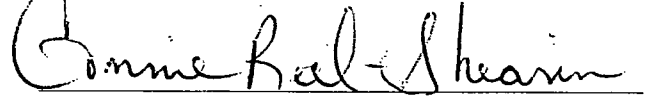
This judgment was entered on **April 13, 2012**, and a copy mailed first class or placed in the appropriate attorney's box on **April 16, 2012**, to attorneys of record or to parties (when appearing pro se) as follows:

Arthur E. Justice Jr. Turner Padgett Graham & Laney, PA
P.O. Box 5478 Florence, SC 29502

ATTORNEY(S) FOR THE PLAINTIFF(S)

T Andrew Johnson Office of the Attorney General P. O. Box
11549 Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)



Connie Reel-Shearin - Clerk of Court

Court Reporter

FILED

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

Sylvester Davis, #306869)
CONNIE REEL-SHEARIN)
CCCP & GS)
FLORENCE COUNTY, SC)

Applicant,)

VS.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
C.A. NO. 11-CP-21-2537

2012 APR 13 PM 1:36

ORDER OF DISMISSAL

CERTIFIED: A TRUE COPY

Connie Reel Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

This matter is before this Court by way of an application for post-conviction relief (PCR) filed September 26, 2011. The State made its return on December 13, 2011. A hearing was convened at the Florence County Courthouse on February 1, 2012. Applicant was present and represented by Arthur Justice, Jr., Esquire. The State was represented by David Spencer of the South Carolina Office of the Attorney General.

Applicant testified on his own behalf. His plea counsel, Robert E. Lee, Esquire, also testified. This Court also had before it the pleadings of both parties, the transcript of Applicant's guilty plea proceeding, the Applicant's records from the South Carolina Department of Corrections, and the Clerk of Court's records of the subject convictions.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court's orders of commitment. Applicant was indicted by the Florence County Grand Jury for murder, four counts of armed robbery, and possession of a weapon during the commission of a violent crime. Robert E. Lee, Esquire, represented Applicant. On December 13,

2010, Applicant pled guilty to accessory after the fact to murder and armed robbery and was sentenced by the Honorable Michael G. Nettles to concurrent sentences of forty-five years imprisonment for the accessory charge and thirty years imprisonment for armed robbery. Applicant pled guilty under Alford to the remaining armed robbery charges. Applicant did not appeal his convictions or sentences.

Prior to his guilty plea, Applicant testified against his co-defendant, Deondre Scott, who was tried and convicted of murder.

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 and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1985).

Ineffective Assistance of Counsel and Involuntary Plea

Applicant alleges his plea was rendered involuntary by ineffective assistance of counsel. The burden of proof is on the applicant in a PCR proceeding to prove the allegations in his application. Bell v. State, 321 S.C. 238, 467 S.E.2d 926 (1996); Rule 71.1(e), SCRPC.

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Judge v. State, 321

S.C. 554, 471 S.E.2d 146 (1996). In order to prove prejudice, an applicant must show that but for counsel's errors, there is a reasonable probability the result at trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Id. Where trial counsel articulates a valid reason for employing certain trial strategy, such conduct should not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985); Stalk v. State, 383 S.C. 559, 681 S.E.2d 592 (2009); Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

This Court will now address each allegation of ineffective assistance of counsel:

Speedy trial - case should have been tried in 180 days

Applicant alleges counsel should have made a motion for speedy trial. Counsel testified that in his view, delay generally is beneficial to the defendant and so he generally would not file a motion for speedy trial. Counsel testified that delay was an essential strategy. This Court finds that Applicant has not met his burden of proof in the instant case.

First, the delay in this case, to the extent it could be called delay, was minimal. The murder occurred in June 2009 and Applicant plead guilty in December 2010, after his co-defendant was tried. Second, the March 5, 1999 order from Chief Justice Finney clearly states that the order "does not create or define a right of a defendant to a speedy trial." Third, this Court finds that Applicant was not prejudiced by any delay and Applicant has failed to present any evidence indicating how he was delayed. Finally, Applicant and his counsel pursued a strategy of cooperating against co-defendant Scott with obvious intent to mitigate his guilt. This is sound trial strategy and not possible until Scott was tried.

This Court finds Applicant has failed to meet his burden of showing counsel's performance was deficient and further, has failed to show how he was prejudiced. Accordingly, this allegation is denied.

Grand jury presentment

Applicant complains that he did not understand his right to have the accessory charge presented to the grand jury or what pleading under Alford meant. Counsel testified that he explained these rights and other rights to Applicant. This Court finds counsel's recollection more credible and gives it great weight, and this Court does not find Applicant's testimony credible. Applicant was pleading to accessory to murder in lieu of murder and therefore, waiver was appropriate. Applicant does not explain how counsel's purported deficiency would have altered his decision to plead guilty and this Court does not find a reasonably objective reason why this alleged deficiency would have led Applicant to forgo pleading guilty and proceed to trial. Stalk, supra. Accordingly, this Court finds Applicant has not met his burden of proving either prong of Strickland in regards to this allegation.

Penalty

Applicant complains that he did not know that the accessory charge carried the same penalty as murder, and if he had known that, he would not have pled guilty. This allegation is without merit. Applicant was advised by the plea court that the charge carried a penalty of thirty years imprisonment to life imprisonment. Further, counsel testified at the PCR hearing that he explained the range of punishment for this offense. This Court finds Applicant's testimony to the contrary is not credible and finds Applicant has not met his burden of proving counsel ineffective.

Applicant wanted to go to trial

Applicant alleges he did not want to negotiate a guilty plea and instead wanted to go to trial. The murder stems from a robbery at a hotel. Applicant's co-defendant, Scott, fired the fatal shot that killed the victim. Applicant alleges he was merely present. He alleges that he drove Scott to the hotel, but that Applicant was only present to sell narcotics.

Counsel testified that Applicant advised him that he took Scott to the hotel aware Scott was going to commit robberies while Applicant dealt drugs. Applicant was going to act as a look out. Applicant went to check on Scott, who fled a hotel room being chased by the victim. Applicant fired a shot in victim's direction in hopes of stopping victim's charge, but victim persisted. Co-defendant shot and killed the victim.

This Court finds that Applicant's recitation of events at the PCR hearing is not credible and is self-serving. Further, this Court finds counsel's testimony credible and gives it great weight. This Court finds that Applicant's decision to plead guilty was knowing and voluntary, and was, in fact, his decision. This Court finds Applicant has not met his burden of showing deficiency on the part

of counsel, and has not met his burden of showing prejudice from the alleged deficiency. This allegation is denied.

Hand of one, hand of all

Applicant alleges that counsel was ineffective for failing to explain accomplice liability to Applicant. In contrast, counsel testified that he did explain accomplice liability. Further, the facts relayed by Applicant to counsel clearly indicate that Applicant was guilty of murder under the theory of accomplice liability. Accordingly, this Court finds Applicant has not met his burden of proving this allegation.

CONCLUSION

Based on 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. Therefore, this Application for Post-Conviction Relief must be denied and dismissed with prejudice.

This Court advises the parties that in order to secure the appropriate appellate review, notice of appeal must be served and filed within thirty (30) days after receipt by counsel of notice of entry of this order. See Rules 203 and 243 of the South Carolina Appellate Court Rules. This Court notes that post-conviction relief counsel must advise an applicant of the right to seek appellate review of a post-conviction relief order. State v. Bray, 366 S.C. 137, 620 S.E.2d 743 (2005). Also, pursuant to Austin v. State, 305 S.C. 453, 409 S.E. 2d 395 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on an applicant's behalf.

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 12 day of April, 2012.



William H. Seals
Presiding Judge
12th Judicial Circuit

Mason, South Carolina

2012 APR 13 PM 1:36
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

FILED

TURNER PADGET

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Honorable Daniel E. Shearhouse
Clerk, South Carolina Supreme Court
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*Alyssa
Davis*