The South Carolina Court of Appeals

The State, Respondent,

Exhibit #1

v.

Anthony Bernard Chapman, Appellant.

The Honorable J. Derham Cole
Spartanburg County
Trial Court Case No. 2010-GS-42-00667,
2010-GS-42-00669, 2010-GS-42-00668

ORDER of DISMISSAL

The appellant in this case was sentenced on appeal on October 15, 2010. The proof of service shows the Notice of Appeal was mailed to counsel for the Respondent on September 20, 2011. Rule 203 (b) (2), SCACR.

Rule 203(b)(2) allows ten (10) days for this service. Further, Rule 263(b) prohibits this Court from extending the time for service of the Notice of Appeal.

The service of the Notice of Appeal was not timely. Under Rule 260(a), this appeal must be and is dismissed.

V. Clerice Allen, Deputy, A.J

Columbia, South Carolina

cc: Assistant Attorney Salley W. Elliott
Chief Appellate Defender Robert M. Dudek
Anthony B. Chapman, # 251075

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG	)	
The STATE of South Carolina,	)	Exhibit #2
Prosecutor,	)	
	)	ORDER
-vs-	)	
	)	Denying Rule 29 Motion
Anthony Bernard CHAPMAN,	)	
	)	2010-GS-42-00667;
	)	2010-GS-42-00668;
Defendant.	)	2010-GS-42-00669
	)	

This matter came before this Court on motion of the defendant pursuant to Rule 59(e), SCRCP, seeking the Court to "reconsider its decision in accepting the defendant's guilty plea ..." based upon "malicious prosecutorial misconduct by the ... Sheriff's Office", and violation of his rights to "due process and 14Th amendment".

The defendant appeared at the hearing held in this matter with counsel, J. Faulkner Wilkes, *Esq.* and the State was represented by J. Edward Hunter of the circuit solicitor's office. The request for relief was treated as a motion timely filed pursuant to Rule 29(a), SCRCrP.

The record reflects that the defendant represented by Michael D. Brown, *Esq.* entered pleas of guilty on the above-referenced indictments to Manufacturing Marijuana 2nd offense, Trafficking in Crack Cocaine 2nd offense, and Possession With Intent to Distribute Cocaine 2nd offense subsequent to a suppression hearing. He was sentenced to concurrent sentences of 5 years, 20 years, and 20 years.

After considering the record in this case including the transcript from the suppression and plea hearing, the argument of counsel, and the applicable law, this Court finds that the defendant's motion to vacate the sentence and plea of guilty should be and is therefore denied.

It Is So Ordered.

February 12, 2016

J. DERHAM COLE, Presiding Judge
The Seventh Judicial Circuit Court

M. HOPE BLACKLEY
2016 FEB 12 PM 4:27
CLERK OF COURT
SPARTANBURG COUNTY

The South Carolina Court of Appeals

File
SNE

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

September 9, 2011

Anthony Chapman, # 251075
LCI-CA31
P.O. Box 205
Ridgeville, S.C. 29472

Exhibit #3

Re: The State, v. Chapman, Anthony

Dear Mr.Chapman:

This responds to your letter dated August 24, 2011.

To properly file an appeal you must comply with the Appellate Court Rules, particularly Rule 203 which deals with the Notice of Appeal. The court rules are available on our website, www.sccourts.org. The notice of appeal must be timely served and filed as provided in Rule 203.

Very truly yours,

V. Claire Allen
DEPUTY CLERK

VCA/dw

cc: Chief Appellate Defender Robert M. Dudek
Assistant Attorney General Salley W. Elliott

10-28-2011

Exhibit #4

The Court of Administration
Rosalyn Frierson, Director
1015 Sumter Street, Suite 200
Columbia, SC 29201

RE: Investigating a Court Order Filed by Deputy Clerk V. Claire Allen

Dear Ms. Frierson:

I would like for you to investigate this court order filed by Deputy Clerk V. Claire Allen. At this present time I do not have anything before the court. I wrote my attorney Michael Brown asking him to file an Out-of-Time or Belated Appeal on my behalf. Shortly thereafter Ms. Allen mailed me this order. Would you please investigate this matter. I am,

Sincerly
Anthony Chapman
Anthony Chapman

Anthony Chapman 251075
HCI/ CA-31
P.O. Box 205
Ridgeville, SC 29472

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Exhibit 5

Anthony B. Chapman, Petitioner, v. Warden Barry Tucker, Respondent.	)	Civil Action No. 6:19-0404-RMG **ORDER AND OPINION**

Before the Court is the Report and Recommendation ("R & R") of the Magistrate Judge (Dkt. No. 24) recommending that the Court grant Respondent's motion for summary judgment (Dkt. No. 9) on Petitioner's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. For the reasons set forth below, the Court adopts the R & R as the Order of the Court and grants Respondent's motion for summary judgment.

I. Background

Petitioner Anthony Chapman, an incarcerated person proceeding here with representation of counsel, seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Dkt. No. 21.) He was indicted for manufacturing marijuana, trafficking in crack cocaine of greater than 100 grams, and possessing cocaine with intent to distribute. In the Spartanburg County Court of General Sessions, Petitioner sought to suppress the drugs seized pursuant to a search warrant for his home and statements made to law enforcement during the search. The trial court conducted an evidentiary hearing and then denied the motions to suppress. Petitioner then pled guilty to manufacturing marijuana, second offense; trafficking between 28 and 100 grams of crack cocaine, second offense; and possession with intent to distribute cocaine, second offense. (Dkt. Nos. 8-2, 8-3, 22-1.)

II. Legal Standard

A. Review of R & R

The Magistrate Judge makes a recommendation to the Court that has no presumptive weight and the responsibility to make a final determination remains with the Court. *See, e.g.*, *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). Where there are specific objections to the R & R, the Court "makes a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.* In the absence of objections, the Court reviews the R & R to "only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Fed. R. Civ. P. 72 advisory committee's note; *see also Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983) ("In the absence of objection . . . we do not believe that it requires any explanation.").

B. Motion for Summary Judgment

Summary judgment is appropriate if a party "shows that there is no genuine dispute as to any material fact" and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). In other words, summary judgment should be granted "only when it is clear that there is no dispute concerning either the facts of the controversy or the inferences to be drawn from those facts." *Pulliam Inv. Co. v. Cameo Props.*, 810 F.2d 1282, 1286 (4th Cir. 1987). "In determining whether a genuine issue has been raised, the court must construe all inferences and ambiguities in favor of the nonmoving party." *HealthSouth Rehab. Hosp. v. Am. Nat'l Red Cross*, 101 F.3d 1005, 1008 (4th Cir. 1996). The movant has the initial burden of demonstrating that there is no genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once the movant has made this threshold demonstration, to survive summary judgment the respondent

must demonstrate that specific, material facts exist that give rise to a genuine issue. *Id.* at 324. "Conclusory or speculative allegations do not suffice, nor does a 'mere scintilla of evidence'" in support of the non-moving party's case. *Thompson v. Potomac Elec. Power Co.*, 312 F.3d 645, 649 (4th Cir. 2002) (quoting *Phillips v. CSX Transp., Inc.*, 190 F.3d 285, 287 (4th Cir. 1999)).

C. Federal Habeas Relief Pursuant to 28 U.S.C. § 2254

A state prisoner who challenges matters "adjudicated on the merits in State court" can obtain federal habeas relief only if he shows that the state court's decision "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court" or "was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d). When reviewing a state court's application of federal law, "a federal habeas court may not issue the writ simply because that court concludes in its independent judgment that the relevant state-court decision applied clearly established federal law erroneously or incorrectly. Rather, that application must also be unreasonable." *Williams v. Taylor*, 529 U.S. 362, 410 (2000). The state court's application is unreasonable if it is "objectively unreasonable, not merely wrong." *White v. Woodall*, 572 U.S. 415, 419 (2014). Meaning, the state court's ruling must be "so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Harrington v. Richter*, 562 U.S. 86, 103 (2011).

The state court's determination is presumed correct and the petitioner bears the burden of rebutting this presumption by clear and convincing evidence. 28 U.S.C. § 2254(e)(1). The state court's decision "must be granted a deference and latitude that are not in operation" when the case is considered on direct review. *Harrington*, 562 U.S. at 101. This is because habeas corpus in federal court exists only to "guard against extreme malfunctions in the state criminal justice systems." *Id.* at 102 (citation and internal quotation marks omitted). Accordingly, pursuant to 28

U.S.C. § 2254(d), a federal habeas court must (1) determine what arguments or theories supported or could have supported the state court's decision; and then (2) ask whether it is possible that fairminded jurists could disagree that those arguments or theories are inconsistent with the holding of a prior decision of the United States Supreme Court. *Harrington*, 562 U.S. at 102. "If this standard is difficult to meet, that is because it was meant to be." *Id.*

Before the petitioner may pursue federal habeas relief to this standard, he must first exhaust his state court remedies. 28 U.S.C. § 2254(b)(1)(A). The petitioner "must present his claims to the state's highest court," *Matthews v. Evatt*, 105 F.3d 907, 911 (4th Cir. 1997) (abrogated on other grounds by *United States v. Barnette*, 644 F.3d 192 (4th Cir. 2011)), which requires the petitioner to have "fairly present[ed] to the state court both the operative facts and the controlling legal principles associated with each claim." *Longworth v. Ozmint*, 377 F.3d 437, 448 (4th Cir. 2004) (internal quotation marks omitted). A federal habeas court should not review the merits of claims that would be found to be procedurally defaulted or barred under independent and adequate state procedural rules. *Lawrence v. Banker*, 517 F.3d 700, 714 (4th Cir. 2008). Rather, for a procedurally defaulted claim to be properly considered by the federal habeas court, the petitioner must "demonstrate cause for the default and actual prejudice as a result of the alleged violation of federal law, or demonstrate that failure to consider the claims will result in a fundamental miscarriage of justice." *Coleman v. Thompson*, 501 U.S. 722, 750 (1991).

III. Discussion

Petitioner's amended § 2254 petition (Dkt. No. 21) raises two grounds for federal habeas relief:

> **Ground One:** Denial of Due Process. Failure to Provide Meaningful Appellate Review of the PCR Court's Denial of Relief.

Supporting Facts: The Appellant's transcript was incomplete and missing portions of testimony on meritorious appellate issues. Because the transcript was missing substantial portions of critical testimony, Appellate counsel moved the state supreme court to grant the Applicant a new PCR hearing. Applicant's motion was filed on 04/06/2017 which was three and a half years after the PCR evidentiary hearing. The supreme court denied the motion and briefing continued. Petitioner included the lack of meaningful appellate review issue in his petition for writ of certiorari. The supreme court subsequently denied the petition.

Ground Two: Ineffective assistance of plea counsel.

Supporting Facts: Plea counsel failed to adequately investigate the Petitioner's case; failed to inform him of discovery pertaining to his arrest; failed to challenge the search warrant and arrest. That due to counsel's failures the resulting plea was not freely, knowingly, and intentionally entered.

The Petitioner would not have plead guilty had he timely been informed of the 4th Amend. Issues:

The state engaged a confidential informant to gain entry to the Petitioner's house through deceit and to conduct an illegal search after the Petitioner had been distracted and left the room allowing the CI to search portions of the Petitioner's house without his knowledge or consent conducting a search on behalf of the police in a manner that would be prohibited by the Fourth Amendment had the police conducted such a search directly.

(Dkt. No. 21 at 6, 8.)

As an initial matter, a petitioner may demonstrate ineffective assistance of counsel by showing the attorney's work was both deficient and prejudicial. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). An attorney's performance is deficient if it was unreasonable under the circumstances of the case and the then-prevailing professional norms. *Kimmelman v. Morrison*, 477 U.S. 365, 384 (1986). Prejudice requires a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694. A "reasonable probability" means "a probability sufficient to undermine confidence in the outcome." *Kimmelman*, 477 U.S. at 384. The *Strickland* test for ineffective assistance of counsel is, therefore highly deferential to the attorney. The standard for § 2254 relief is itself

highly deferential to the state court. *Harrington v. Richter*, 562 U.S. 86, 102 (2011). As a result, when the state court adjudicated an ineffective assistance claim on its merits, the § 2254 district court's review is "doubly deferential." *Knowles v. Mirzayance*, 556 U.S. 111, 123 (2009). The district court's focus is "not whether counsel's actions were reasonable," but rather "whether there is any reasonable argument that [the petitioner's] counsel satisfied *Strickland*'s deferential standard." *Harrington*, 562 U.S. at 105.

Here, Respondent argues that Ground Two is procedurally barred. (Dkt. No. 8 at 10, No. 17 at 2-4.) As the Magistrate Judge notes, the issues presented in Ground Two were presented and ruled on by the post-conviction relief ("PCR") court, but were not raised on the appeal of that decision. In response, Petitioner contends that Ground One is alleged in an effort to excuse any procedural default of Ground Two, in that because the PCR hearing transcript was substantially incomplete, the PCR process ended without Petitioner having the opportunity to raise the issues in Ground Two. (Dkt. No. 22 at 3.)

"[A] federal court ordinarily may not consider claims that a petitioner failed to raise at the time and in the manner required under state law unless 'the prisoner demonstrates cause for the default and prejudice from the asserted error.'" *Teleguz v. Pearson*, 689 F.3d 322, 327 (4th Cir. 2012) (quoting *House v. Bell*, 547 U.S. 518, 536 (2006)). To show cause, a petitioner must "show that some objective factor external to the defense impeded counsel's efforts to comply with the State's procedural rule," *Murray v. Carrier*, 477 U.S. 478, 488 (1986), or that "the factual or legal basis for the claim was not reasonably available to the claimant at the time of the state proceeding," *Roach v. Angelone*, 176 F.3d 210, 222 (4th Cir. 1999). "Alternatively, Petitioner may prove that failure to consider the claims will result in a fundamental miscarriage of justice." *McCarver v. Lee*, 221 F.3d 583, 588 (4th Cir. 2000).

As the Magistrate Judge details, the PCR court addressed each issue raised in Ground Two. Considering those rulings and the basis for each in the record, Petitioner has failed to show that any alleged deficiencies in the PCR hearing transcript impeded him from raising the claims at issue on appeal. Moreover, as the Magistrate Judge notes, the South Carolina Supreme Court's decision to deny Petitioner's motion to reconstruct that record is a matter of state law interpretation, and "it is not the province of a federal habeas court to reexamine state-court determinations on state-law questions." *Estelle v. McGuire*, 502 U.S. 62, 67-68 (1991). Similarly, the record here reflects that the PCR record was sufficient to allow briefing of issues on appeal, including in light of the fact that Petitioner was present and represented by counsel at the PCR hearing and that there is a reasonable basis to conclude the issues could have been litigated there without any reconstruction of the record.

For these reasons, and having conducted a *de novo* review of the record in light of Petitioner's objection to the R & R (Dkt. No. 25), the Court finds that Respondent is entitled to summary judgment.

IV. Certificate of Appealability

The governing law provides:

> (c)(2) A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right.
>
> (c)(3) The certificate of appealability . . . shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

28 U.S.C. § 2253; *see also* Rule 1(b) Governing Section 2254 Cases in the United States District Courts ("The district court may apply any or all of these rules to a habeas corpus petition not covered by [28 U.S.C. § 2254]."). A petitioner may satisfy this standard by demonstrating that "reasonable jurists would find the district court's assessment of the constitutional claims

debatable or wrong." *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Rose v. Lee*, 252 F.3d 676, 683 (4th Cir. 2001). "[T]o secure a certificate of appealability on claims that the district court denied pursuant to procedural grounds, [the petitioner] must demonstrate both (1) that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and (2) that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Rose v. Lee*, 252 F.2d 676, 684 (4th Cir. 2001) (internal quotation marks omitted). Here, the legal standard for the issuance of a certificate of appealability has not been met because a reasonable jurist would not find it debatable that Ground Two was not preserved for federal habeas review. Therefore, a Certificate of Appealability is denied.

V. Conclusion

For the foregoing reasons, Court **ADOPTS** the R & R (Dkt. No. 19) as the Order of the Court. The Court **GRANTS** Respondent's motion for summary judgment (Dkt. No. 9) and **DENIES** a Certificate of Appealability.

AND IT IS SO ORDERED.

Richard Mark Gergel
United States District Court Judge

December 11, 2019
Charleston, South Carolina

AO 450 (SCD 04/2010) Judgment in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of South Carolina

Anthony B Chapman *Petitioner*	)	
v.	)	Civil Action No. 6:19-cv-00404-RMG
Warden Barry Tucker *Respondent*	)	

SUMMARY JUDGMENT IN A CIVIL ACTION

The court has ordered that *(check one)*:

☐ the petitioner *(name)* _____ recover from the respondent *(name)* _____ the amount of _____ dollars ($__), which includes prejudgment interest at the rate of ____ %, plus postjudgment interest at the rate of ____ %, along with costs.

☐ the petitioner recover nothing, the action be dismissed on the merits, and the respondent *(name)* _____ recover costs from the petitioner *(name)* _____.

■ other: The Respondent's motion for Summary Judgment is granted. A certificate of appealability is denied.

This action was *(check one)*:

☐ tried by a jury, the Honorable _____ presiding, and the jury has rendered a verdict.

☐ tried by the Honorable _____ presiding, without a jury and the above decision was reached.

■ decided by the Honorable Richard M. Gergel.

Date: December 11, 2019

CLERK OF COURT

s/Kathy Rich, Deputy Clerk

Signature of Clerk or Deputy Clerk

SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Exhibit #6

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

December 12, 2016

Mr. Anthony B. Chapman, #251075
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

Dear Mr. Chapman:

I am in receipt of your letter dated December 8, 2016. I understand your concerns with having all of your issues raised in your certiorari petition following your PCR hearing. However, it is my obligation to raise only non-frivolous issues to the Court. I will review the materials and determine which issues, if any, have merit and raise only those issues to the Court.

Sincerely,

Susan B. Hackett

Susan B. Hackett
Appellate Defender

SBH/