

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas
William H. Seals, Circuit Court Judge

RECEIVED

MAY - 2

S.C. Supreme

Case No. 2011-CP-21-2340

RECEIVED

MAY - 3 2013

Darrell N. Mitchell, Appellant,

S.C. Supreme Court

vs.

State of South Carolina,Respondent.

NOTICE OF APPEAL

The Appellant, Darrell N. Mitchell, appeals the denial of his Application for Post-Conviction Relief. The Order denying Mr. Mitchell's application was filed with the Florence County Clerk of Court on March 27, 2013. I received it in my office on April 1, 2013.

April 25, 2013



Samuel T. Brunson
Post Office Drawer 431
511 W. Evans Street
Florence, South Carolina 29503
(843) 669-8111

Attorney for Appellant

Other Counsel of Record:

Tyson Johnson, Sr. Esquire
Assistant Attorney General
P.O. Box 11549
Columbia, South Carolina 29211

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

**APPEAL FROM FLORENCE COUNTY
Court of Common Pleas
William H. Seals, Circuit Court Judge**

Case No. 2011-CP-21-2340

Darrell N. Mitchell, 192228, Appellant,

vs.

State of South Carolina, Respondent.

PROOF OF SERVICE

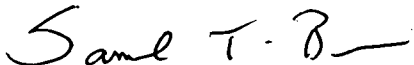
I certify that I have served the Notice of Appeal on Daniel Sheerhouse, Tyson Jonson, Sr. and Coonie Reel-Shearin by depositing a copy of the same in the United States Mail, postage prepaid on the 25th day of April 25, 2013, addressed to the following:

**The Honorable Daniel Sheerhouse
Clerk of the South Carolina Supreme Court
Post Office Box 11330
Columbia, SC 29211**

**Tyson Jonson, Sr., Esquire
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211**

**The Honorable Connie Reel-Shearin
Clerk of Court, Florence County
180 N. Irby St., MSC-E, RM. B11
Florence, SC 29501-3456**

April 25, 2013


Samuel T. Brunson

**Post Office Drawer 431
511 W. Evans Street
Florence, South Carolina 29503
(843) 669-8111**

Attorney for Appellant

FILED

FORM 4

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

2013 MAR 27 AM 8:53

JUDGMENT IN A CIVIL CASE

CASE NO. 2011-CP-21-2340

CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

Darrell N. Mitchell #192228
PLAINTIFF(S)

State of South Carolina
DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or
	<input type="checkbox"/> 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

NOTIFIED A TRUE COPY
Connie Reel-Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

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

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
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

Date

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)
Darrell N. Mitchell, # 192228,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS

2011-CP-21-2340

ORDER OF DISMISSAL

DOMINIC J. ...
CLERK OF COURT
FLORENCE COUNTY, S.C.
2013 MAR 25 PM 4:20
FILED

This matter comes before the Court by way of an Application for Post-Conviction Relief filed September 1, 2011. Respondent made a timely Return. The Court convened an evidentiary hearing into the matter on February 27, 2013, at the Florence County Courthouse. The Applicant was present at the hearing and was represented by Samuel T. Brunson, Esquire. Tyson Andrew Johnson, Sr., Esquire of the South Carolina Attorney General's Office represented Respondent.

At the hearing, the Applicant testified on his own behalf. Also testifying was R. Scott Joye, Esquire. This Court had before it the PCR Application, the State's Return, the records of the County Clerk of Court, the transcript, and the Applicant's records from the South Carolina Department of Corrections.

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 at the August 2007 term of the Florence County Grand Jury for murder. R. Scott Joye, Esquire, represented Applicant.

Applicant was tried September 8-10, 2008 and convicted by a jury as charged. The Honorable J.

CERTIFIED A TRUE COPY
Connie Red-Sparrow
CLERK OF COURT C.P & C.S.
FLORENCE COUNTY, S.C.

While Applicant said counsel was not present in the room during the conveying of the plea offer, counsel testified he was in the room at the time and that “no way on God’s green earth” would he allow a client to speak with the Solicitor without his presence. Applicant testified he complained to the Supreme Court about counsel. Applicant indicated when the judge asked Applicant if he wanted another lawyer, he chose not to get a new lawyer.

Applicant averred counsel never “re-checked” the “hit” on his DNA regarding the DNA match on evidence found at the scene (blood on a mop at Applicant’s residence used to clean up the blood at the scene) and with Applicant’s DNA. Applicant argued there was no way there could have been a DNA match as Applicant believed the State didn’t have Applicant’s DNA. Counsel testified the State already had Applicant’s DNA because of his past incarceration within the SC Department of Corrections.

Applicant further complained that counsel failed to get him released on bond, and that had Applicant been out of jail on bond pending his trial, he would have been more able to assist in the defense of his case. Counsel testified bond would have been futile as there was no one who could pay Applicant’s bond, and that he told Applicant if he could get someone that would pay his bond he would get him a hearing. Applicant could not produce anyone to counsel that was willing and able to pay his bond, therefore counsel utilized time and resources toward the preparation of the trial of the case.

Applicant next claimed counsel failed to call a witness named “Pat” who cleaned his house to testify in his behalf. Applicant failed to show what this witness would have testified to or how the absence of this witness prejudiced his case. When asked about this person, counsel testified this is

“the first time I have ever heard about Pat the housekeeper.” Counsel could not have called a witness that Applicant never told him about.

Applicant complained that counsel failed to bring up applicant’s entire health history before the jury and failed to have him demonstrate he could not have dragged a body in order to move it or hide it. Counsel indicated he did bring up Applicant’s lack of health, and it appears to have been part of his trial strategy in defending Applicant. The jury was able to see that Applicant needed assistance in walking. Counsel testified to the difficulty in putting up a defense to this case as Applicant told counsel he was in his bedroom with a prostitute smoking crack cocaine during the murder and that he did not hear anything.

Applicant chose to not take the stand in part because it would have opened the door to his criminal history, in that he had stolen from his parents in the past, as the alleged crime in the instant case was against his father. Additionally, Applicant had been out fishing with his brother in law which tended to show how mobile Applicant actually was, and counsel felt this would have tended to lessen Applicant’s credibility. Additionally, not calling Applicant as a witness preserved counsel’s ability to argue last and counsel felt that was a trial strategy advantage.

Applicant indicated he wanted to call the prostitute he was with as a witness, but counsel testified Applicant did not provide a last name for the prostitute. The investigator counsel hired was also unable to determine the identity of the prostitute. Counsel advised Applicant that the defense of being “fifteen feet away from a murder with a prostitute smoking crack would be a problem if he testified.” Counsel also testified “he would have opened the door that he had stolen from his family before.”

Next Applicant complained that the trial Judge brought up Applicant’s willingness to plead

guilty in front of a jury. Tr. P 5. Counsel testified the jury referenced in the transcript was not Applicant's jury, as Judge Nettles was also selecting a jury for a case separate and distinct from Applicant's case. Counsel indicated he would not have gone forward had these comments been made by the trial judge about Applicant in front of the very jury that would try Applicant, nor would Judge Kinard, who had decades on the bench, have made the comments in front of Applicant's jurors. Counsel testified "the jury pool had never seen my client" and that it "didn't happen – never happened."

With regard to the trial strategy decisions, counsel testified "If I were trying this case tomorrow, I would try it exactly the same way." I find that counsel was not ineffective with regard to his representation of Applicant. I find that counsel was not deficient in this respect, nor was applicant prejudiced by any alleged deficiency. Further, I find counsel's trial preparation and actions were reasonable under prevailing professional norms, and therefore this claim is denied.

Applicant has failed to establish his burden of proving ineffective assistance of counsel as well as failing to establish he was prejudiced in any way. I find that counsel's performance was not deficient under these circumstances. Therefore this Court finds the Applicant's claims to be without merit, and they are therefore denied.

Other Allegations

No other allegations were raised or testified to at the PCR hearing. Therefore, any additional allegations raised in the PCR Application or amendment are deemed waived because no evidence was presented.

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 is denied and dismissed with prejudice.

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 22 day of March, 2013.



WILLIAM H. SEALS
Presiding Judge
12th Judicial Circuit

Macon, South Carolina.

FILED
2013 MAR 25 PM 4:22
CLERK OF COURT
FLORENCE COUNTY, S.C.

CERTIFIED A TRUE COPY
Carrie Red-Spear
CLERK OF COURT C.P. & C.S.
FLORENCE COUNTY, S.C.

SAMUEL T. BRUNSON
ATTORNEY AT LAW
P. O. DRAWER 431
511 WEST EVANS ST.
FLORENCE, SOUTH CAROLINA 29503

Telephone (803) 669-8111

Fax (803) 669-3010

April 25, 2013

The Honorable Daniel Shearhouse
Clerk of the South Carolina Supreme Court
Post Office Box 11330
Columbia, SC 29211

RECEIVED

APR 29 2013

RE: Darrell N. Mitchell vs. State of South Carolina
2011-CP-21-2340

S.C. SUPREME COURT

Dear Mr. Shearhouse:

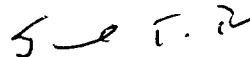
Enclosed for filing, please find enclosed a Notice of Appeal as well as the original Proof of Service in the above referenced matter. This case arrives out of an application for Post-Conviction Relief. I am also enclosing a copy of the Order to be challenged on appeal. I was appointed counsel on this matter. I will be transferring this case to the Office of Indigent Appellate Defense.

By copy of this letter, I'm serving the same upon the Clerk of Court for Florence County, Connie Reel- Shearin and upon the Attorney for the Respondent, Tyson Johnson Sr. with the Attorney General's Office.

Should you have any questions, comments, or concerns on the above please do not hesitate to contact me.

With kindest regards, I remain

Very truly yours,



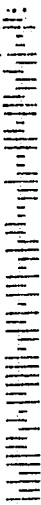
Samuel T. Brunson

STB:jjb
Enclosure(s) as noted

cc: Tyson Johnson, Sr., Esquire
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

cc: Connie Reel-Shearin
Clerk of Court Florence County
180 N. Irby St., MSC-E, RM. B11
Florence, SC 29501-3456

Darrell N. Mitchell #192228
LCI Kershaw South 1157
990 Wisackie Highway
Bishopville, SC 29010



Samuel T. Brunson
Attorney at Law
P.O. Box 431
Florence, South Carolina 29503

The Honorable Daniel Sheerhouse
Clerk of the South Carolina supreme Court
Post Office Box 11330
Columbia, SC 29211

