

THE SOUTH CAROLINA SUPREME COURT

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

William H. Seals, Judge

Case No.
(2011-CP-21-46)

Christopher McLeod, Jr., #339758 Appellant.

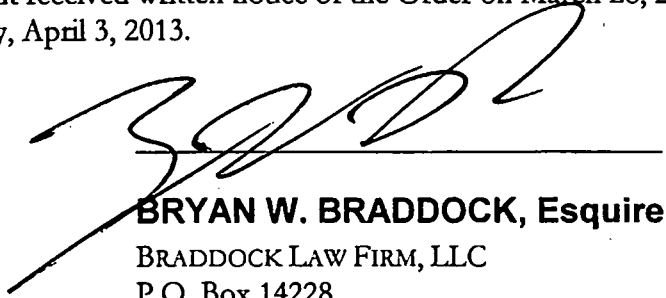
v.

State of South Carolina, Respondent.

NOTICE OF INTENT TO APPEAL

Appellant appeals the decision of the Honorable Judge signed March 19, 2013, which was placed in the mail by the Clerk of Court for Florence County to appellant's counsel's prior firm on March 27, 2013, and received by appellant's counsel on March 28, 2013.

Counsel for applicant received written notice of the Order on March 28, 2013, and files this Notice by regular mail today, April 3, 2013.



BRYAN W. BRADDOCK, Esquire

BRADDOCK LAW FIRM, LLC

P.O. Box 14228

Florence, South Carolina 29504

(843) 292-8780

APPOINTED ATTORNEY FOR PCR PETITIONER

Other Counsel of record:

T.A. Johnson, Jr., Esquire

Office of the Attorney General

P.O. Box 11549

Columbia, SC 29211

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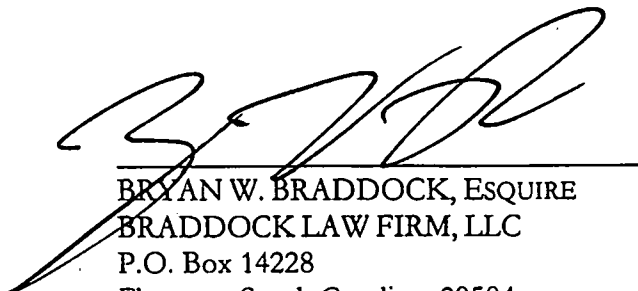
Christopher McLeod Jr., #339758.....Appellant

v.

State of South Carolina, Respondent.

PROOF OF SERVICE

I certify that the foregoing was served on the persons listed below by placing same in the U.S. Mail postage prepaid this day, April 3, 2013.



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STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Christopher McLeod, Jr., 339758

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2011-CP-21-46

ORDER OF DISMISSAL

2013 MAR 21 PM 3:16
CONNIE REEL-SHEARIN
CLERK OF COURT C.P. & C.S.
FLORENCE COUNTY, SC

FILED

This matter comes before the Court by way of an Application for Post-Conviction Relief filed January 11, 2011. Respondent made a timely Return. The Court convened an evidentiary hearing into the matter on February 26, 2013, at the Florence County Courthouse. The Applicant was present at the hearing and was represented by Bryan W. Braddock, 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 Karen E. Parrott, Esquire, who represented Applicant at trial, as well as Robert Wells, Esquire, who prosecuted Applicant. 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 presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted at the January 2007 term of the Florence County Grand Jury for criminal sexual conduct in the first degree, lewd &

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

act on a minor, assault and battery of a high and aggravated nature and unlawful conduct towards a child. Karen Parrott, Esquire represented Applicant. On March 11, 2010, Applicant was tried before the Honorable Thomas A. Russo and a jury. The jury acquitted Applicant of CSC and Lewd Act but convicted Applicant of ABHAN and Unlawful conduct. Judge Russo sentenced Applicant to ten years imprisonment for ABHAN and a consecutive sentence of seven years imprisonment for unlawful conduct. Applicant appealed his conviction but withdrew his appeal, which was dismissed by the Court of appeals on January 27, 2011.

ALLEGATIONS

In his current Application, Applicant alleges that he is being held in custody unlawfully for ineffective assistance of counsel.

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 at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. 17-27-80.

Ineffective Assistance of Counsel

In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged 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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland, supra). 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

Ineffective Assistance

Applicant testified that Attorney Parrott (counsel) called the witnesses Applicant requested, that he raised the defenses he was entitled to during trial, and that he had no objections about the trial itself or the way it was handled. He admitted the evidence would have convicted him and candidly acknowledged his guilt to ABHAN and unlawful conduct, but not to the CSC or Lewd act on a minor, and these latter two charges are the source of his Application for Post Conviction Relief. Counsel indicated Applicant admitted he punched or slapped the child victim in this case and that he

never denied his guilt with regard to all of the charges, and admitted to her that he wiped hair off the child's private parts. Counsel discussed the possibility of a plea in this case, but that Applicant never asked her about just pleading guilty to the assault charges only.

Applicant's main complaint was that he was given a consecutive sentence on ABHAN and unlawful conduct - the two charges he was willing to plead guilty to all along. Counsel testified the consecutive sentence was the result of judicial discretion, and that Applicant may very well have received a concurrent sentence for the two convictions. Counsel also testified that Applicant had an opportunity to enter a plea before the Honorable Judge Daniel Pieper, but Applicant "backed out." Robert Wells testified he certainly would have taken the Applicant's plea to the ABHAN and Unlawful conduct, then tried him on the remaining charges, but Wells testified most of the time he would offer a concurrent sentence, but in this case "I could not have recommended a concurrent sentence."

Applicant further provided no evidence that the result of his sentence would have been different had he already entered a plea on the ABHAN and unlawful conduct. The issuance of a consecutive sentence was not something counsel had control over and instead was in the sole discretion of the sentencing judge.

With regard to counsel's strategy of going forward on all charges instead of having her client plead to two, then try the other two, "I didn't see the point in doing it." She felt as a trial strategy, it made more sense to allow Applicant to candidly admit what he was guilty of on the witness stand so that the jury could give him credibility for those admissions.

This Court is not persuaded by Applicant's claim. With regard to Applicant's claim that he would have pled to the two assault charges if he had the change, I find Applicant not credible in the

light of his backing out of a plea before Judge Pieper. It is also uncertain and speculative whether if he had been able to plea to the assault charges whether this would have made a difference in the outcome of Applicant's sentencing, therefore Applicant's allegations of ineffective assistance are without merit, and this claim is denied.

I find that counsel's performance was not deficient under these circumstances. In reaching this conclusion, this Court finds counsel's testimony credible and gives it great weight. This Court does not find Applicant's testimony credible or persuasive. I find that counsel was not ineffective with regard to her investigation, trial preparation, or trial performance. I find that counsel was not deficient in this respect, nor was applicant prejudiced by any alleged deficiency. This Court finds counsel's trial strategy was reasonable and further finds counsel's performance was not deficient. Further, I find counsel's trial preparation and actions were reasonable under prevailing professional norms, and therefore this claim is 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 the 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 19 day of March 2013.


WILLIAM H. SEALS
Presiding Judge
12th Judicial Circuit

Mario, South Carolina.

FILED
2013 MAR 21 PM 3:16
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

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Connie Reel-Shearin
CLERK OF COURT C.P. & C.S.
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Attorney at Law

Writer's e-mail address:
Justice_jackson@hotmail.com

SC Supreme Court
P.O. Box 11330
Columbia, SC 29211

Re: Notice of Intent to Appeal from Christopher McLeod, #339758, v.
State of South Carolina; Case Number: 2011-CP-21-46

Dear Sir or Madam:

I was Court Appointed, and I expect appellate defense will probably handle the appeal. Enclosed for filing please find the Notice of Appeal, proof of service on the Attorney General, and the Order of Dismissal. By copy of this letter, I am also serving Counsel for the state.

With Kind Regards,


BRYAN W. BRADDOCK, Esquire

Enclosures-as indicated

CC:

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

APR -4 2013
OFFICE OF THE ATTORNEY GENERAL
APPELLATE DEFENSE
Sharon Graham, Coordinator
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Christopher McLeod #339758

File