

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable R. Lawton McIntosh, Circuit Court Judge

Case No. 2019-CP-32-000214

Lance Leon Miles, #299857,Petitioner,

v.

State of South Carolina,.....Respondent.

NOTICE OF APPEAL

Applicant, Lance Leon Miles, appeals the order of the Honorable R. Lawton McIntosh, filed June 6, 2022, and received by the undersigned on June 13, 2022.

June 13 _____, 2022



ASHLEY A. MCMAHAN, ESQUIRE

MCMAHAN LAW, LLC

PO Box 50536

Columbia, SC 29250

803-219-1110

ashley@macvance.com

SC Bar No. 71676

ATTORNEY FOR APPLICANT

Opposing Counsel:
Taylor Z. Smith, Asst, Attorney General
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549

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S.C. SUPREME COURT

FACTUAL & PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. During the early morning hours of September 13, 2013, a narcotics investigator with the Lexington County Sherriff's Department was working package interdiction at a Federal Express shipping facility in West Columbia and identified a package he suspected contained illegal narcotics based on several distinguishing factors. The investigator photographed the package and it continued to be processed in accordance with routine Federal Express procedures. As a result of further investigation, three law enforcement officers conducted surveillance at the delivery location in unmarked, undercover vehicles. Officers observed the mail carrier deliver suspicious package to the address on the label and watched Applicant, while on his cellular phone, walk over and pick up the package. Two of the officers then converged on Applicant, who threw the package and looked around as if searching for an escape route. One officer drew his weapon and ordered Applicant to the ground. Applicant failed to comply and was assisted to the ground by an officer and handcuffed. In response to questions about what was in the package, Applicant indicated it likely contained illegal drugs. Officers then read Applicant his Miranda rights, and, at that time, Applicant orally waived those rights and again indicated the box likely contained illegal drugs. Applicant also gave consent to open the box. Rather than opening the box based on this consent, officers requested the assistance of a canine unit. A canine unit arrived shortly thereafter, and the canine alerted that the package contained narcotics. Law enforcement then obtained a search warrant for the package. Upon opening the package, law enforcement discovered three-hundred Oxycodone pills hidden inside three separate plastic bags concealed inside a wax candle. Upon discovery of the pills, Applicant was then advised of his rights for a second time, waived his rights, and gave a written statement

that he was picking up the package for \$100, was to deliver it to its owner, and knew it contained illegal drugs. Applicant was placed under arrest and transported to the detention center at this time.

In March 2014, the Lexington County Grand Jury indicted Applicant for trafficking in illegal drugs pursuant to S.C. Code Ann. § 44-53-370(e)(3) (Supp. 2016). Applicant retained the services of Robert Theo Williams, Sr., Esquire, to represent him. On February 11, 2015, Applicant proceeded to a jury trial before the Honorable Thomas A. Russo, circuit court judge. Assistant Solicitors Micah Caskey and Casey Rankin of the Eleventh Circuit Solicitor's Office prosecuted the case. During pre-trial hearings, Applicant moved to suppress his oral and written statements made at the scene and the trial court conducted a Jackson v. Denno hearing. Following testimony from the three law enforcement officers at the scene, the State conceded Applicant's statements made pre-Miranda warnings were inadmissible and it would not seek to introduce those in its case in chief. The trial court ruled Applicant's oral and written statements made following the advisement of Miranda warnings were given knowingly, freely, and voluntarily, and therefore, were admissible. However, the trial court determined the portions of Applicant's statements pertaining to his prior involvement in retrieving packages for money must be redacted.

Following pre-trial matters, the State presented its case in chief. Applicant elected not to testify or present witnesses in his defense. Following the denial of direct verdict motions, the case proceeded to the jury, who convicted Applicant as indicted. Judge Russo sentenced Applicant to a mandatory-minimum term of twenty-five years of imprisonment.

Thereafter, Applicant filed a timely notice of appeal, and on appeal argued the trial court erred in providing the jury with a subsequent jury instruction advising the jury that Applicant did not need to know what specific drug was in the package to have the requisite mental state under the statute, erred in denying his motion for directed verdict on whether he knew the specific type

of illegal drug in the package, and erred in admitting his statements to law enforcement. Following briefing and oral argument, the South Carolina Court of Appeals affirmed his conviction and sentence published opinion filed Aug. 23, 2017. State v. Lance Leon Miles, 421 S.C. 154, 805 S.E.2d 204 (Ct. App. 2017). Specifically, the Court of Appeals found the trafficking in illegal drugs statute (section 44-53-370(e)(3)) did not require the State to prove Applicant knew the specific type of illegal drug he possessed to be convicted, thereby affirming the subsequent jury instruction and the denial of the directed verdict motion. The Court of Appeals also ~~affirmed~~ ^{RLD} affirmed the trial court's admission of Applicant's statements.

Applicant petitioned for rehearing, which the Court of Appeals denied on October 19, 2017. Applicant then petitioned for a writ of certiorari to the South Carolina Supreme Court. Following submission of the State's return, the Supreme Court denied certiorari on October 18, 2018. The Remittitur was returned to the circuit court on October 22, 2018. Thereafter, Applicant initiated this current proceeding with the filing of an application for post-conviction relief.

CURRENT ACTION BEFORE THE COURT

In his *pro se* application for post-conviction relief, Applicant alleged he is being held in custody unlawfully due to:

1. Ineffective assistance of trial counsel
 - a. Failure to investigate and prepare for trial
 - b. Failing to ensure all discovery was provided to the defense and reviewed with Applicant
 - c. Failure to move to suppress Applicant's custodial statements to law enforcement
 - d. Failure to object to jury instructions
2. Ineffective assistance of appellate counsel, without any supporting grounds

In response, Respondent filed its return, partial motion to dismiss, and motion for a more definite statement.

In his amended application served on December 6, 2021, by counsel McMahan, Applicant raised the additional allegations for relief against trial counsel:

A. Counsel's defense was ineffective as the defense should have been Applicant did not know there were drugs in the package, rather than Applicant didn't know what kind of drugs were in package.

B. Failed to adequately challenge the Miranda warnings/detention of the Applicant.

C. Did not ask for lesser included offenses at the trial.

D. Did not adequately challenge the search warrant and the chain and interception of the package.

E. Did not call witnesses at trial who would testify regarding the package.

At the evidentiary hearing, Applicant proceeded forward on the claims as set forth in his amended application. Applicant testified on his own behalf and presented testimony from Jennifer Gillespie, who was dating Applicant at the time of the incident. Respondent presented trial counsel Robert Theo Williams, Sr., Esquire.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged various claims of ineffective assistance of trial counsel and asserts that as a result of counsel's purported errors, he is entitled to relief in the form of vacation of his conviction and sentence and a remand back to the court of general sessions for a new trial.

Under the Uniform Post-Conviction Procedures Act, an applicant may seek post-conviction relief upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;

3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); Rule 71.1(e), SCRCP.

This Court has thoroughly reviewed the record in its entirety, including the trial transcript, the appellate records, and the records for this current action. Additionally, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses presented at the evidentiary hearing, which allowed the Court to scrutinize the credibility of all witnesses presented. Based on this comprehensive review, this Court finds Applicant has failed to meet his burden of proof as to any of his allegations and finds this action must be denied and dismissed with prejudice. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Counsel

Applicant has alleged trial counsel was constitutionally ineffective in his representation for five specific allegations as set forth in his amended application. After a thorough review of all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof as

to each allegation of ineffective assistance of counsel and denies each allegation, which will be specifically addressed below.

Applicant, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution, U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). Applicant has the burden of proving the allegations in his post-conviction relief action, and when alleging that counsel was constitutionally ineffective, he must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that it cannot be relied upon as having produced a just result." Strickland, 466 U.S. at 686

Strickland does not guarantee perfect representation, only a " 'reasonably competent attorney.' " 466 U. S. at 687 (quoting McMann v. Richardson, 397 U.S. 759, 770 (1970)). Representation is constitutionally ineffective only if it "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Strickland, 466 U.S. at 686. Just as there is no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities. Id.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C.

441, 442, 334 S.E.2d 813, 814 (1985). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Petitioner 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.

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668.

Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, Strickland requires the post-conviction relief applicant to prove "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 697. Therefore, the function of the post-conviction relief court is to determine if "in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance" required of a criminal defense attorney." Id. at 690.

Although courts may not indulge "post hoc rationalization" for counsel's decision making that contradicts the available evidence of counsel's actions, Wiggins v. Smith, 539 U.S. 510, 526-527 (2003), neither may they insist counsel confirm every aspect of the strategic basis for his or

her actions. There is a “strong presumption” that counsel’s attention to certain issues to the exclusion of others reflects trial tactics rather than “sheer neglect.” Yarborough v. Gentry, 540 U.S. 1, 8 (2003). After an adverse verdict at trial even the most experienced counsel may find it difficult to resist asking whether a different strategy might have been better, and, in the course of that reflection, to magnify their own responsibility for an unfavorable outcome. Strickland, however, calls for an inquiry into the objective reasonableness of counsel’s performance, not counsel’s subjective state of mind. Id. at 688; Harrington v. Richter, 562 U.S. 86 (2011).

With respect to prejudice, an applicant must demonstrate “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Strickland, 466 U.S. at 694. It is not enough “to show that the errors had some conceivable effect on the outcome of the proceeding.” Id. at 693. Counsel’s errors must be “so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.” Id. at 687. See Harrington, 562 U.S. 86.

“Surmounting Strickland’s high bar is never an easy task.” Padilla v. Kentucky, 559 U.S. 356, 371 (2010), and the strong societal interest in finality has “special force with respect to convictions based on guilty pleas.” United States v. Timmreck, 441 U.S. 780, 784 (1979). An ineffective assistance of counsel claim can function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial, and so the Strickland standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. Strickland, 466 U.S. at 689–690. Even under de novo review, the standard for judging counsel’s representation is a most deferential one. Unlike a later reviewing court, the attorney observed the relevant proceedings knew of materials outside the

record and interacted with the client, with opposing counsel, and with the judge. It is “all too tempting” to “second-guess counsel’s assistance after conviction or adverse sentence.” Id. at 689; see also Bell v. Cone, 535 U. S. 685, 702 (2002); Lockhart v. Fretwell, 506 U. S. 364, 372 (1993). The question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” not whether it deviated from best practices or most common custom. Strickland, 466 U.S at 690.

In assessing prejudice under Strickland, the question is not whether a court can be certain counsel’s performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently. Wong v. Belmontes, 558 U.S. 15 (2009); Strickland, 466 U.S. at 693. Instead, Strickland asks whether it is “reasonably likely” the result would have been different. Id. at 696. This does not require a showing that counsel’s actions “more likely than not altered the outcome,” but the difference between Strickland’s prejudice standard and a more-probable-than-not standard is slight and matters “only in the rarest case.” Id. at 693, 697. The likelihood of a different result must be substantial, not just conceivable. Id. at 693. Harrington, 562 U.S. 86.

This Court finds Applicant has failed to meet his requisite burden of proof as to each allegation of ineffective assistance of trial counsel. Each allegation is addressed below.

Allegation that counsel failed to present a defense that Applicant did not know there were drugs in the package rather than that Applicant did not know what kind of drugs were in the package

Initially, Applicant asserts trial counsel was ineffective for failing to present a proper defense on behalf of Applicant. Specifically, Applicant asserts that the defense should have been that Applicant did not know that any drugs were in the package, not that Applicant did not know what type of drugs were in the package. At the evidentiary hearing, Applicant denied knowing

there were drugs in the package, but then acknowledged he thought it contained marijuana based on the comments of the law enforcement officers when they approached him and during his arrest. He did not learn the box contained Oxycodone until officers opened the box. He testified he was supposed to pick up the box and deliver it to someone who was waiting in the apartment complex parking lot. Applicant denied ever giving any oral statements to law enforcement and asserted he did not provide a statement until his written statement. He asserted he never told law enforcement illegal drugs were in the box and insisted he did not know anything illegal was in the box. However, Applicant later acknowledged that he told law enforcement he knew illegal drugs were in the package in his written statement and elaborated that he thought marijuana was in the box.

In response to this allegation, counsel testified Applicant gave oral and written statements to law enforcement wherein he admitted that there were illegal drugs in the package but denied knowing the specific type of drug. He testified that he moved to suppress these statements but once the suppression motion was denied, the only plausible defense that he could make is that Applicant was not guilty because the trafficking in illegal drugs statute required Applicant to have the requisite knowledge of the specific drug for a conviction. He elaborated that Applicant's initial statement to law enforcement, given before he was provided with Miranda warnings, was that he did not know what was in the package, and counsel testified he wanted this statement to come in as a matter of strategy as further evidence that he did not have the requisite mental state required for trafficking in illegal drugs. He again testified that all of Applicant's subsequent oral and written statements were that he knew the package contained illegal drugs and, accordingly, the only viable defense was that Applicant lacked the necessary mental state based on a lack of specific knowledge as to drug type.

This Court finds this allegation is directly refuted by the record, which clearly establishes that Applicant repeatedly informed law enforcement that he knew illegal drugs were in the package, albeit he did not know what specific type of substance was in the package. His written statement includes the following:

QUESTION: DID YOU KNOW DRUGS ARE IN THE PARCEL "BOX"?

ANSWER: YES.

(ROA p. 344). Based on Applicant's written and oral statements to law enforcement, trial counsel made a strategic decision to craft a defense strategy based on a lack of requisite mental status for trafficking in illegal drugs pursuant to Section 44-53-370(e)(3)). This was the only plausible defense counsel could have made based on the evidence that was going to be admitted at trial following the denial of his motion to suppress Applicant's statements. This argument was the subject of Applicant's direct appeal and resulted in a published opinion analyzing the required knowledge for a conviction in trafficking in illegal drugs. State v. Lance Leon Miles, 421 S.C. 154, 805 S.E.2d 204 (Ct. App. 2017). Counsel was not deficient for his strategic decision to present this defense on behalf of Applicant. This allegation is denied.

Allegation that counsel failed to adequately challenge the Miranda warnings and detention

As his second ground for relief, Applicant asserts trial counsel was ineffective for failing to properly challenge his statements and detention. However, the record directly refutes this allegation. Counsel properly made a motion to dismiss Applicant's various oral and written statements and the trial court conducted a ^{thorough} hearing pursuant to Jackson v. Denno. During this hearing, the State presented testimony from three law enforcement officers who testified as to their interactions with Applicant at the scene. Following the testimony from the three law enforcement witnesses, Petitioner moved to suppress his oral and written statements and argued

he was under duress when he made the statements. Petitioner also argued there was conflicting testimony as to whether Edmonson questioned Petitioner prior to giving any Miranda warnings. The State conceded Petitioner's statements made pre-Miranda warnings were inadmissible and it would not seek to introduce those in its case in chief. The trial court ruled Petitioner's oral and written statements made following the advisement of Miranda warnings were given knowingly, freely, and voluntarily, and therefore, were admissible. However, the trial court determined the portions of Petitioner's statements pertaining to his prior involvement in retrieving packages for money must be redacted. The record is clear that Applicant did indeed challenge the admission of Applicant's statements and was able to successfully keep out Applicant's initial, pre-Miranda statement based on a concession from the State (which he then later admitted based on a matter of sound trial strategy to present to the jury that Applicant initially denied anything illegal was in the package). This Court finds this allegation is without merit and denies it.

Allegation that counsel was ineffective for failing to ask for a lesser-included offense at trial

As a third allegation, Applicant asserts trial counsel was ineffective for failing to request a jury instruction on a lesser-included offense at trial. However, this claim fails as a matter of law, as the only evidence presented at trial was that Applicant was in possession of over four grams of Oxycodone, the requisite amount for trafficking in illegal drugs pursuant to Section 44-53-370(e)(3)). Specifically, the evidence established Applicant was in possession of three-hundred pills of Oxycodone that amounted to nine grams of Oxycodone, a Schedule II drug. (R. 244-60). Accordingly, as the only evidence presented was that Applicant possessed over the requisite amount of Oxycodone for trafficking, he was not entitled to a jury instruction on any lesser-included offenses. See Sellers v. State, 362 S.C. 182, 190, 607 S.E.2d 82, 86 (2005) ("Second, as to the trafficking charge, Respondent did not present evidence that he possessed less than the

minimum required for trafficking. In fact, the only evidence before the jury was that the amount of methamphetamines in question would constitute trafficking. In addition, the State presented the only evidence as to the amount of drugs at issue, which included testimony that Respondent possessed enough methamphetamines to warrant a trafficking charge. As a result, Respondent was not entitled to a lesser-included charge, such as possession with intent to distribute, for the trafficking charge.”), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). Counsel was not deficient for failing to request a jury instruction that was not supported by the evidence and could not have been given as a matter of law. This Court finds this claim must be denied.

Allegation that counsel was ineffective for failing adequately challenge the search warrant, the chain of custody, and the interception of the package

As a fourth allegation, Applicant asserts trial counsel was ineffective for failing to adequately challenge the search warrant, the chain of custody, and the interception of the package. Trial counsel testified that he did not challenge the search warrant because law enforcement had sufficient probable cause based on Applicant’s statements admitting the package contained illegal drugs and the canine’s alert that the package contained illegal substances. All of this evidence was presented during the thorough Jackson v. Denno hearing before trial and established that law enforcement had probable cause to obtain a search warrant. The only evidence before this Court is that the magistrate had sufficient probable cause to issue a search warrant. See State v. Dupree, 354 S.C. 676, 685, 583 S.E.2d 437, 442 (Ct.App.2003) (“The magistrate’s task in determining whether to issue a search warrant is to make a practical, common sense decision concerning whether, under the totality of the circumstances set forth in the affidavit, including the veracity and basis of knowledge of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in the particular place to be searched.” (citing

Illinois v. Gates, 462 U.S. 213, 238 (1983)). Accordingly, Applicant has failed to meet his burden of establishing any deficiency of counsel. This claim is denied.

Allegation that counsel was ineffective for failing to call witnesses at trial who would testify regarding the package

As a fifth allegation, Applicant asserts trial counsel was ineffective for failing to call witnesses who would testify at trial regarding the package. At the evidentiary hearing, Applicant testified there were witnesses who could have been investigated when the case was "fresh", such as an unidentified black female who was the sister of the guy who was supposed to get the box or his girlfriend.

The sole witness Applicant presented was his girlfriend at the time of the incident, Jennifer Gillespie. She testified that she was present when Applicant was arrested, although she clarified that she was in her apartment when law enforcement first approached Applicant and did not come outside until law enforcement had descended on Applicant. She testified that Applicant was being told to get on the ground by numerous officers with guns drawn. She estimated that more than ten law enforcement cars were present at the scene, and they were a mix of marked and unmarked cars. She testified the package was already on the ground when she came out of her apartment, and she never saw Applicant holding the package. She testified she talked to trial counsel before the trial but was not asked to testify on Applicant's behalf.

When questioned about this allegation, counsel testified that he discussed calling witnesses with Applicant. He testified that the only possible witness who would have anything to add would have been the woman who came out of the apartment and looked at the box while on the phone, but that they were not able to identify her. He testified Applicant did not provide him the names of any other potential witnesses.

This Court finds Applicant cannot meet his requisite burden as to this allegation. Initially, Applicant failed to present the woman who he asserts was related to the person picking up the box. Since this witness was not called, the claim must fail as a matter of law. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (noting our courts have "repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial"); Glover v. State, 318 S.C. 496, 499, 458 S.E.2d 538, 540 (1995) (holding a PCR applicant's mere speculation as to what the witnesses' testimony would have been cannot, by itself, satisfy the burden of showing prejudice); Smith v. State, 404 S.C. 493, 502, 745 S.E.2d 378, 383 (Ct. App. 2012) (holding an applicant failed to meet his burden of proof where he failed to present testimony from any of the witnesses he asserts should have been called at trial).

As to the sole witness that Applicant did present, his then-girlfriend provided testimony that lacked credibility when compared with the record. For example, she testified that more than ten law enforcement vehicles were present on the scene when the record reflects that a much, much smaller number were present and all the vehicles were unmarked. Moreover, her testimony would not have changed the result of Applicant's trial, as it would not have resulted in suppression of Applicant's statements or the package in a pre-trial hearing, and there is not a reasonable probability of a different result at trial had she testified. Accordingly, this allegation is denied.

CONCLUSION

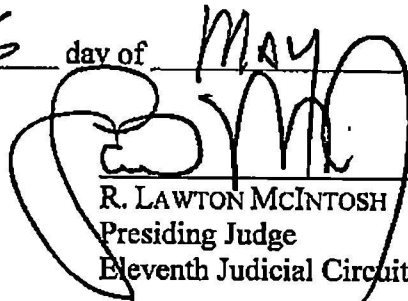
Based on all the foregoing, this Court finds Applicant has not established any other constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief is denied and dismissed with prejudice.

This Court notes that if Applicant wishes to appeal this order, Applicant, though his counsel of record, must file and serve a notice of appeal within thirty days from the receipt of this Order. See Rule 203 and 243, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (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), SCRCR, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall remain remanded to the custody of the State of South Carolina.

AND IT IS SO ORDERED this 26 day of May, 2022.


R. LAWTON MCINTOSH
Presiding Judge
Eleventh Judicial Circuit

Anderson, South Carolina

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S.C. SUPREME COURT