

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
HONORABLE WILLIAM A. MCKINNON
2021-CP-42-1700

Samuel Jeter, SCDC# 242979

APPELLANT,

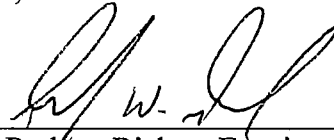
vs.

State of South Carolina,

RESPONDENT.

NOTICE OF APPEAL

Samuel Jeter appeals the denial of his Post-Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable William A. McKinnon, Circuit Judge on June 6, 2022 an Order issued on June 30, 2022, and filed on July 11, 2022. The Appellant received notice of the judgment on July 12, 2022.



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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)
 COUNTY OF SPARTANBURG)
)
)
 Samuel Jeter, #242979,)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE SEVENTH JUDICIAL CIRCUIT

Case No.: 2021-CP-42-01700

ORDER OF DISMISSAL

This matter comes before this Court by way of Applicant’s post-conviction relief application filed June 2, 2021. Respondent made its return on January 7, 2022, requesting an evidentiary hearing be convened. An evidentiary hearing was held on June 6, 2022, at the Spartanburg County Courthouse. Rodney Richey, Esquire, represented Applicant. Assistant Attorney General Chelsey Marto represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Counsel Paul Neely also testified. After reviewing all records and evidence before this Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. Findings of fact and conclusions of law are set forth below.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Spartanburg County Clerk of Court. During its January 2018 term, the Spartanburg County Grand Jury indicted Applicant for first degree burglary (2018-GS-

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42-0421).¹ Applicant was represented by Paul K. Neely, Esquire. Assistant Solicitors Spenser H. Smith and Sara B. Bozarth of the Seventh Circuit Solicitor's Office prosecuted the case. On January 7, 2019, Applicant proceeded to trial before the Honorable J. Derham Cole, circuit court judge, and a jury. Applicant was found guilty of first-degree burglary. Judge Cole sentenced Applicant to life imprisonment.

Applicant filed a timely notice of appeal on January 17, 2019, that was perfected by Jessica M. Saxon, Esquire, who filed a brief raising the following issue:

Did the trial court err in admitting the 911 call over defense counsel's objections under Rule 403, SCRE without performing the requisite Rule 403 analysis on the record, where the admission of the 911 call was cumulative in nature and so prejudicial as to inflame the passions of the jury?

Briefing concluded on May 13, 2020. The South Carolina Court of Appeals affirmed the convictions by unpublished opinion. *State v. Jeter*, 2021-UP-152 (S.C. Ct. App. May 5, 2021). The remittitur was issued on May 26, 2021.

Summary of Relevant Facts

In October of 2017, Sharaia Walker lived with her mother Katrina, sister Alexis, her two children, and Alexis's son. Around midnight on October 26, 2017, Sharaia entered the home through the front door, locking the door behind her and allowing her sleeping daughter to remain on the couch. Sharaia was on the phone, sitting in her bed when she noticed a "dark figure" poke its head into the room and leave. She left the room to investigate and saw a strange man wearing a ski mask and gray hoodie, put his hand up to his mouth and say, "Shh, be quiet." She immediately began screaming, and Katrina and Alexis awoke, despite Applicant's attempts to

¹ Applicant was also indicted for attempted common law robbery and first degree assault and battery, both of which the jury found he was not guilty of. However, since these charges were not brought up in Applicant's application and, accordingly, will not be addressed in this return.

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quiet her down. (R. 21-27, 35, 46).

With all three women alarmed and, in the hallway, Applicant ran down the hall, but knocked over Katrina, grabbed her arms, and began repeating, "Where's the money?" over and over. Sharaia retrieved her gun and began firing at him. Several shots hit the man as he fled through the house and out the door. (R. 31-39).

Officer Shanetta Thompson with the Spartanburg Police Department responded to the scene. She found shell casings inside and outside the home and a shoe in front of the house. Officers found Applicant, still wearing a ski mask and gray hoodie, behind the home next door, bleeding from several bullet wounds. As EMS worked on Applicant, he told them his name was Calvin Jeter, but was eventually identified as Samuel Jeter. (R. 101-27, 132-45).

Applicant testified at trial that he did not go to the home to burglarize it, but meant to go to a friend's house to stay the night but was very drunk and went into the wrong home instead. He testified he knocked on the door, but after receiving no response opened an unlocked front door and walked into an empty living room. Hearing voices towards the back of the house, he went towards them and opened a door to find Sharaia. Realizing he had the wrong house, he immediately shut the door. When confronted by Sharaia, he claimed he stated being in the home was "his bad" and started to leave when Sharaia began chasing him with the gun. (R. 162-67).

On cross examination, Applicant conceded he was wearing a ski mask that night and wore it while interacting with the women; he only took it off as he was running at the door with bullets flying at him. When asked whose house Applicant intended to enter that night, he claimed he was going to see his cousin Anthony Hollis. Applicant admitted the two areas had several distinct differences. Applicant eventually changed his story to that he did not believe he was walking entering his cousin's home, but merely a house his cousin was inside and knew he was walking

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into a stranger's home. He claimed he did not look around the living room enough to see a child sleeping on the couch. (R. 168-76).

When questioned about why he provided officers with the wrong name, he claimed Calvin Jeter was his brother's name and could not remember why he told it to police because he was "unconscious." He also claimed he was still "unconscious" at the hospital and had no recollection of speaking with Investigator McCullough except that he kept asking for the nurse. As to why he had pepper spray, Appellant claimed it was to protect him from dogs. (R. 176-79).

Current Action Before this Court

In his current PCR application, Applicant alleges he is being held in custody unlawfully because of ineffective assistance of counsel in that:

1. I was convicted of burglary first and was found not guilty of all other charges involved in this case. S.C. Code 16-1-311 states that a person must have "intent to commit a crime in the dwelling." Due to the fact that the jury found me "not guilty" of all other charges, the state failed to prove intent to commit a crime" and so the burglary first conviction cannot stand. My lawyer (Paul Neely) nor the court explained this fact to the jury, nor did they take any action on my behalf. The conviction is unlawful and should not stand.
2. I was offered a fifteen year plea deal before trial but as an act of "trial tax" was given a life sentence. There are not aggravating circumstances in this case to justify the burglary first conviction, much less a life sentence."

At the PCR hearing, Applicant proceeded forward on the following allegations:

1. Ineffective Assistance of Counsel:
 - a. Failure to file an appeal or move for a new trial based upon conflicting verdicts.
 - b. Failure to pursue a defense of mistake at trial.

All other allegations raised in his initial application and amendments are deemed waived and abandoned and, accordingly, will not be addressed in this order.

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Summary of the Testimony

Applicant Testimony

Applicant testified he was convicted of first-degree burglary. He stated Counsel did not effectively represent him. He stated that the incident occurred because he was intoxicated and went into the wrong house. He stated that he did not break into the house because the door was already open. He stated that when he was leaving the house he was shot. He stated he received a fifteen-year plea offer in the case and that he discussed the offer with Counsel. He stated he did not want to take the offer because he thought it was a bad deal and stood by the decision to reject the offer as of the date of the post-conviction relief hearing. He stated he spoke with Counsel about how the State intended to seek life without parole if he went to trial. He stated that Counsel brought a copy of the statutes under which he was charged to the jail and that they discussed these together. He stated he did not intend to commit a crime and that he was only found guilty of first-degree burglary; not first-degree assault and battery or attempted armed robbery.

Applicant stated he wanted a direct appeal. He stated Counsel informed him of the risks of going to trial. He stated he was seeking a new trial because he believes that the State cannot prove he committed first-degree burglary. He stated he did not think the jury charge was proper. He stated he thought Counsel should have challenged the first-degree burglary charge because it was not consistent with the jury's verdict on the other charges. He stated that no great bodily injury was committed during the incident.

Applicant was unresponsive when asked by this Court what Counsel could have done differently in this case.

On cross-examination, Applicant stated that he thought he had to be convicted of a crime to be properly convicted of first-degree burglary. Applicant stated he would have pled if a

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deal to a lesser-included offense was offered but was unwilling to plead to first-degree burglary. Applicant stated he could not remember if he expected Counsel to file a motion for a new trial, but remembered Counsel filed a notice of appeal. Applicant stated he did not ask for money within the home and was too intoxicated to remember whether he gave the police the wrong name.

Counsel Testimony

Counsel stated that Applicant turned down all plea offers. He stated the defense at trial was that Applicant was drunk and mistakenly went into the wrong home. He stated he told Applicant to take the offer. Counsel stated it never crossed his mind to move for a new trial based upon conflicting verdicts. He stated he filed a notice of appeal.

On cross-examination, Counsel stated he did not think a new trial would be granted based upon conflicting verdicts. Counsel stated that Applicant entered the home with a ski mask, was shot in the rear end by someone in the home while running away and was found bleeding out in the next-door neighbor's yard.

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. Before this Court are the Spartanburg County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the trial transcript, direct appeal records, and this PCR action's records. 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 conclusion of law as required by South Carolina Code of Laws, Section 17-27-80 (2003).

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Ineffective Assistance of Counsel

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show “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 v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel’s performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel’s actions fell outside of the zone of “reasonableness under prevailing professional norms.” *Strickland*, 466 U.S. at 688. *See also* Rule 71.1(e), SCRPC (“The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence.”). Reasonableness is determined by the “variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant,” and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel’s performance remains highly deferential towards defense counsel. *Id.* at 5. The presumption that counsel acted competently, because competent representation may be executed

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in virtually “countless” ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel’s deficient performance must have prejudiced the applicant so 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. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Realistically, this matters “only in the rarest case” because “[t]he likelihood of a different result must be substantial, not just conceivable.” *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

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. *Strickland*, 466 U.S. at 696. 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. *Id.* at 696-97.

Failure to Pursue a Defense

Applicant’s claim that Counsel was ineffective for failure to pursue a defense at trial is without merit. Whether failure to assert a defense constitutes deficient performance ultimately hinges on whether failure to explore the decision was a strategic decision. *Strickland*, 466 U.S. at 680. If there is only one line of defense, counsel must conduct a “reasonably substantial investigation” into that line of defense. *Id.* (quoting *Washington v. Strickland*, 693 F.2d at 1252). However, if there are several lines of defense, counsel may still be effective even if every single line is not explored. *Id.* “[W]hen counsel’s assumptions are reasonable given the totality of the

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circumstances and when counsel's strategy represents a reasonable choice based upon those assumptions, counsel need not investigate lines of defense that he has chosen not to employ at trial." *Id.* at 681 *Id.* (quoting *Washington v. Strickland*, 693 F.2d at 1255). Further, "[w]hen counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." *Yarborough*, 540 U.S. at 5 (citing *Strickland*, 466 U.S. at 690).

Regarding failure to alert the Applicant of a defense specifically, Counsel will not be found ineffective if there was inadequate evidence to support the defense, if the defense did not exist at the time of trial, or another avenue of defense existed. See *McCray v. State*, 317 S.C. 557, 455 S.E.2d 686 (1995) (stating that failure to state an entrapment defense was not ineffective when the applicant denied any wrongdoing); *Arnette v. State*, 306 S.C. 556, 413 S.E.2d 803 (1992) (stating that failing to inform of a defense was not ineffective when there was no evidence at trial that supported the defense); *Robinson v. State*, 308 S.C. 361, 417 S.E.2d 361, 417 S.E.2d 88 (1992) (stating that Counsel was not ineffective when failing to state a defense that was not recognized by the Court until six years later and was just recently acknowledged by the scientific community).

Applicant alleges ineffective assistance of counsel for failure to assert a defense consisting of Applicant's allegation that he drunkenly entered the wrong home by mistake. However, this defense was exhausted at trial, primarily through Applicant's own testimony. (Tr. 201-05, 212-13). Applicant did not articulate any new defense or defense strategy at the PCR hearing that was not already addressed at trial. Applicant's issue with Counsel in this regard is seemingly less rooted in a failure on Counsel's part and more of a displeasure over the fact that the defense did not lead to the jury rendering a favorable verdict. Regardless, Counsel did its part

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in presenting the chosen defense, even though it was not successful. Thus, he cannot be found deficient. Additionally, because nothing new regarding the defense was presented at the PCR hearing that was not presented at trial, no prejudice is found. Accordingly, relief is denied on this ground.

Failure to Move for a New Trial/Appeal

Applicant's allegation that Counsel was ineffective for failure to move for a new trial or file an appeal is without merit. The record makes clear that Counsel filed a notice of appeal. Concerning the failure to file for a motion for a new trial, the only issue Applicant states he wants raised deals with Applicant's receipt of conflicting verdicts from the jury at trial. Specifically, Applicant claims that to be found guilty of first-degree burglary, he must also have been found guilty of a second offense. He stated that this second offense conviction is required to meet the statutory element of first-degree burglary of "intent to commit a crime." See S.C. Code Ann. § 16-11-311(A)(2003) (a person is guilty of first-degree burglary if he "enters a dwelling without consent and with intent to commit a crime in the dwelling.").

Here, the underlying argument Applicant wanted advanced through either his direct appeal or a post-trial motion is without merit. The fact that the jury failed to convict Applicant of another crime is immaterial to the validity of the burglary conviction. See *State v. Peterson*, 336 S.C. 6, 7-8, 518 S.E.2d 277, 278 (1999) (finding that "[t]he fact that the jury failed to convict [the defendant] . . . does not affect the validity of the burglary charge. Indeed, the fact is immaterial."). Counsel was not deficient for failing to advance an unsuccessful argument, particularly considering his PCR hearing testimony that pursuing a post-trial motion based upon conflicting verdicts was not a consideration and would not have led to a favorable outcome for the defense. This Court concurs with Counsel finds that the post-trial motion on this basis would

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not have been successful in the case. Thus, no prejudice is found, and relief is denied on this allegation accordingly.

Conclusion

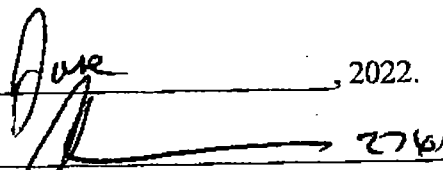
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty days of receipt by counsel of the judgment entry's written notice to secure appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has the right to appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

IT IS THEREFORE ORDERED:

1. The PCR application be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 30 day of June, 2022.


 WILLIAM A. MCKINNON
 Presiding Judge
 Seventh Judicial Circuit

Spartanburg, South Carolina.

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