THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM CHEROKEE COUNTY

Court of Common Pleas

HONORABLE G.D. MORGAN

2020-CP-11-00168

EDDIE MOTTS, SCDC# 114069

APPELLANT,

vs.

STATE OF SOUTH CAROLINA,

RESPONDENT.

NOTICE OF APPEAL

Eddie Motts appeals the denial of his Post- Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable G.D. Morgan, Circuit Judge on April 18, 2022 Order issued on August 23, 2002 and filed on August 29, 2022. The Appellant received notice of the judgment on September 6, 2022.

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STATE OF SOUTH CAROLINA COUNTY OF CHEROKEE	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICIAL CIRCUIT
Eddie Motts, #114069, Applicant, v. State of South Carolina, Respondent.	Case No.: 2020-CP-11-00168 **ORDER OF DISMISSAL**

This matter comes before this Court by way of Applicant's post-conviction relief application filed March 13, 2020. Respondent made its return on August 4, 2020, requesting an evidentiary hearing be convened. An evidentiary hearing was held on April 18, 2022, at the Spartanburg County Courthouse. Rodney W. Richey, Esquire, represented Applicant. Assistant Attorney General Chelsey F. Marto represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Counsel H. Dean Cook, Esquire, 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 Cherokee County Clerk of Court. During its December 2018 term, the Cherokee County Grand Jury indicted Applicant for attempted murder (count one) and possession of a firearm by a person convicted of a crime of violence (count two)[1] (2018-GS-11-

[1] At trial, the State decided not to proceed on this count because Applicant had not previously been convicted of a violent felony.

01600) and attempted murder (count one) and possession of a weapon during commission of a violent crime (count two) (2018-GS-11-01601). Applicant was represented by Trent Pruett and H. Dean Cook, Esquires. Solicitor Barry Barnette of the Seventh Circuit Solicitor's Office prosecuted the case. On September 9-11, 2019, Applicant proceeded to trial before the Honorable J. Mark Hayes, II, circuit court judge, and a jury. Applicant was found guilty as charged on the remaining three counts and Judge Hayes sentenced Applicant to thirty years' imprisonment on each attempted murder charge and five years for possession of a weapon during commission of a violent crime, sentences running consecutively. Applicant did not pursue a direct appeal.

Summary of Relevant Facts

On March 26, 2018, Applicant was in a bar drinking with several other people. (Tr. 87-95). At one point, Applicant stood up, stated that no one in the bar could "kick his ass", and the bartender, Tony Lipscomb, told him to leave and that he would not be served anymore. (Tr. 95-96). After being asked to leave, Applicant became volatile and began threatening everyone in the bar. (Tr. 96-97). The bartender grabbed a pool cue to hit Applicant with if he continued acting up. (Tr. 97-98). Eventually Applicant left the bar. (Tr. 98-99). Applicant reentered the bar shortly thereafter and then pulled a gun, threatening to kill the bartender and a patron, Brandon Ramsey, whom Applicant had a previous altercation with. (Tr. 101). 911 was called immediately and the bartender began pleading with Applicant to put the gun away. (Tr. 101). Applicant threatened to shoot if the phone was not put away and proceeded to hold everyone in the bar hostage. (Tr. 101). At one point, Applicant chased the patron towards the front door, demanding he get off the phone with 911. (Tr. 102-03). Applicant ultimately shot Brandon in the thigh. (Tr. 103, 107). Applicant then went after the bartender and pulls the trigger. (Tr. 101-02). The bartender grabbed

his gun, but it was jammed. (Tr. 102). Applicant then shot the bartender the second time and the police enter the building, and the bartender ran away. (Tr. 102). The bartender was shot in the chest, which required several surgeries and left him with life-long scar tissue. (Tr. 107-08).

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. "Ineffective assistance of counsel."
    a. "Lawyer did not show supporting evidence."
2. "All evidence was not presented at court."
    a. "Gaffney Police Dept. did not hand over all evidence (police statement)."
3. "Some evidence seemed to be altered (fake)."
    a. "video showed seemed to be different in the layout of building."
4. "Feel like I did not get a fair trial."

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

1. Ineffective assistance of counsel:
    a. Brevity of time spent in consultation.
    b. Failure to develop a trial strategy.
    c. Failure to review discovery.
    d. Failure to provide Applicant with a copy of his discovery.
    e. Failure to pursue self-defense defense.
    f. Failure to pursue a self-defense jury instruction.
    g. Failure to investigate fabricated evidence.
    h. Failure to discuss Applicant's trial testimony.
    i. For participation in a conspiracy with the State.

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

Summary of the Testimony

Applicant Testimony

Applicant testified that he hired Counsel. He stated they discussed very little about the case. He stated Counsel visited him about four times. He stated that they did not discuss any plans or strategies at the jailhouse meetings. He stated they did not review discovery and he

never saw the discovery in the case.

Concerning the incident, Applicant stated he was told to leave Harold's Restaurant and Bar. He stated he left the bar and went back inside. He stated he was too drunk to drive. He stated when he entered the bar, he saw Tony with the gun in his left hand. Applicant stated he fired three bullets and the only person he intentionally shot was Tony. He stated that Tony had a gun pointed at his head and heard the gun click. He stated he shot Tony in the stomach out of self-defense.

He stated that the State and the Court prevented him from putting forth a self-defense defense. He stated he only felt the seriousness of the crime after he was sentenced. He stated that some of the evidence was fabricated, including the 911 call and some of the videos. He stated that the videos were restaged. He stated he did not tell Counsel about these issues because he did not know what to say. He stated he testified at trial, but never discussed the substance of his testimony with Counsel. He stated he never wanted to harm anyone. He stated he did not discuss trial strategy with Counsel. He stated that the forensic evidence in the case corroborated his story. He testified the State, Counsel, and the police were all a part of a conspiracy to fabricate the evidence in the case so he would be found guilty at trial.

On cross-examination, Applicant stated he was unsure why he decided to go to trial without knowing what the evidence against him was. He stated he was not aware of how a trial worked, which is why he hired Counsel. He stated he tried to tell Counsel that the evidence was fabricated. He stated he testified at trial and that some of the evidence at trial was fabricated. Specifically, he claimed the video footage was fabricated to show he shot Tony in the wrong side of the chest. He stated he was positive that Counsel, the State, the police, the witnesses, and the victims all conspired against him. On re-direct, Applicant stated he was totally innocent of all

charges.

Counsel Testimony

Counsel testified he discussed a possible self-defense defense with Applicant, but stated he did not think it necessarily applied, given the facts of the case. He stated he visited Applicant at the jail about a dozen times. Counsel testified he showed Applicant all the discovery in the case. During their discussions, Counsel testified that Applicant mentioned he thought the videos were modified. However, Counsel testified he did not believe that the videos were altered. Counsel testified that the chosen trial strategy was pursuing the insanity defense. Counsel stated he went over the questions he would ask Applicant on the stand with Applicant before trial. Counsel testified that no plea offer was made, and no bond was given in the case either. Counsel testified that he discussed the seriousness of the charges with Applicant and that he thought Applicant understood the seriousness of the charges. Counsel testified that he had no knowledge of a conspiracy against Applicant, nor did he particulate in one. Counsel testified that he provided a copy of the discovery to Applicant before trial and an additional copy after trial.

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 Cherokee County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the trial transcript, 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 Annotated Section 17-27-80 (2003).

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. S*ee also* Rule 71.1(e), SCRCP ("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 with a strong presumption that counsel acted competently, because competent representation may be executed 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.

Brevity of Time

Applicant alleges that Counsel was ineffective for failure to maintain contact with him to properly go over the case. "[B]revity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation." *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (2012). Applicant must show evidence indicating "how additional preparation or communication would have resulted in a different outcome." *Id. See Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (where application failed to show ineffective assistance of counsel based on lack of preparation by neglecting to show evidence of what counsel failed to discover or what defenses counsel could have pursued had he more fully prepared for the case);

Skeen v. State, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997) (where applicant failed to show ineffective assistance of counsel when he did not present evidence showing how additional preparation would have impacted the trial).

This Court finds Counsel credible in his testimony that he met with Applicant multiple times to discuss the discovery, charges, and trial strategy. Further, there has been no showing that had Counsel met with Applicant more that the results of the trial would have been different. Accordingly, this Court find Counsel acted reasonably and was not deficient. Further, Applicant was not prejudiced by any alleged deficiency on the part of Counsel. Thus, relief is denied on this ground.

Failure to Review Discovery

Applicant claims Counsel was ineffective for failure to review the discovery with him. This Court finds this allegation is without merit. Specifically, Counsel credibly testified that he met with Applicant multiple times and, through their meetings, discussed all the discovery in the case. Counsel also credibly testified that he provided a copy of the discovery to Applicant before trial and an additional copy after trial. Thus, this Court finds this claim to be without merit and denies relief accordingly.

Failure to Provide Applicant with a Copy of the Discovery

Applicant claims Counsel was ineffective for failure to provide Applicant a copy of the discovery. However, Counsel credibly testified that he reviewed all discovery with Applicant and that he provided Applicant with a copy of his discovery before trial and provided him with an additional copy of his discovery after trial. Thus, this Court finds this claim to be without merit and relief is denied on this ground.

Failure to Pursue Self-Defense Defense

Applicant claims Counsel was ineffective for failure to pursue a self-defense defense. 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 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).

Counsel credibly testified that he discussed the possibility of a self-defense defense with Applicant but stated that he did not think the facts of the case, as backed by video evidence, fit that defense. Additionally, Counsel credibly testified that the chosen defense was an insanity defense, which he reasonably chose to deploy instead. Finally, Counsel still secured self-defense jury instructions in the case, running counter to the argument that the defense was not deployed at all. Counsel is not deficient for failure to assert an inadequate defense, for focusing on a better defense instead, and for nevertheless securing the proper jury instruction regarding the defense. Additionally, Applicant failed to show how further argumentation regarding the defense would have changed the outcome at trial. Thus, no prejudice has found. Accordingly, relief is denied on this ground.

Failure Pursue a Self-Defense Jury Instruction

Applicant alleges ineffective assistance of counsel for failure to pursue a self-defense jury instruction. However, the trial transcript reflects that Counsel requested the instruction. (Tr. 277-80). After argument from both sides concerning the jury charge, the Court ultimately decided to charge the jury on self-defense. (Tr. 330-32). Thus, Applicant's allegation that Counsel was ineffective for failure to pursue a self-defense jury instruction is refuted by the record and the request for relief denied as a result.

Failure to Develop a Trial Strategy

Applicant claims Counsel was ineffective for failure to develop a trial strategy. However, as discussed above, the chosen defense at trial was the insanity defense. Counsel credibly testified that the insanity defense was the chosen defense and that this was discussed with Applicant. Thus, this Court declines to find Counsel failed to create a trial strategy or failed to

convey this to Applicant. Counsel is not deficient on this ground and no prejudice is found flowing therefrom.

Failure to Investigate Fabricated Evidence

Applicant alleges ineffective assistance of counsel for "failure to investigate." *Strickland* makes clear that Defense counsel "has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." 466 U.S. at 691. When highlighting failure to investigate as a ground for a larger ineffective assistance of counsel claim, judicial determination of this claim's validity is evaluated for "reasonableness [under] all the circumstances" with "a heavy measure of deference to counsel's judgments" applied. *Id.* That said, counsel is required to, at minimum, "interview potential witnesses and make an independent investigation of the facts and circumstances of the case", *Ard v. Catoe*, 372 S.C. 318, 331-32, 642 S.E.2d 590, 597 (2007) (quoting *Troedel v. Wainwright,* 667 F.Supp. 1456, 1461 (S.D.Fla.1986), *aff'd,* 828 F.2d 670 (11th Cir.1987)), including aggressively re-examining all the government's forensic evidence and conducting analyses of all other available forensic evidence." *Id.* (quoting *American Bar Association Guidelines For The Appointment And Performance Of Defense Counsel In Death Penalty Cases, reprinted in* 31 Hofstra L.Rev. 913, 1015 (2003) (emphasis added)).

Counsel is not obligated to "investigate lines of defense that he has chosen not to employ at trial." *Strickland*, 466 U.S. at 682 (quoting *Washington v. Strickland*, 693. F.2d 1243, 1255 (5th Cir. 1982)). 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).

Applicant made a blanket assertion that some of the evidence, including the 911 call and

the videos, in his case was fabricated. However, he failed to show what exactly about any of this evidence was fabricated. What little Applicant did say was fabricated, including what side of the chest he shot the victim in, is purely non-consequential. Additionally, Counsel credibly testified that he discussed Applicant's theory of fabricated evidence with him before trial, but that he did not see any indication of fabrication. Thus, this Court finds Counsel was not deficient for failing to investigate evidence that provided no indication of potential fabrication. Additionally, this Court finds that Applicant has made no showing of prejudice on this ground. Accordingly, relief is denied on this ground.

Failure to Discuss Applicant's Trial Testimony

Applicant claims Counsel was ineffective for failure to discuss Applicant's trial testimony with her. However, Counsel credibly stated he went over the questions he would be asked on the stand at trial with Applicant before trial. Additionally, Applicant failed to show what would have changed in his testimony through further preparation or how that would have impacted the proceedings. Thus, relief is denied on this ground.

Conspiracy

Applicant claims Counsel was ineffective for participating in a conspiracy with the State to ensure he would be found guilty at trial. Counsel credibly testified that there was no conspiracy or collusion with the State. This Court also finds no evidence that a conspiracy or collusion took place. Accordingly, relief is denied on this ground.

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 23rd day of August, 2022.

G.D. MORGAN
Presiding Judge
Seventh Judicial Circuit

Spartanburg, South Carolina.