

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT  
APPEAL FROM SPARTANBURG COUNTY

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Court of Common Pleas

**OCT 21 2022**

HONORABLE DANIEL D. HALL

**S.C. SUPREME COURT**

2022-CP-42-00839

BOBBY GOODE, SCDC# 366501

APPELLANT,

vs.

STATE OF SOUTH CAROLINA,

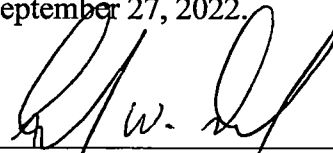
RESPONDENT.

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**NOTICE OF APPEAL**

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Bobby Goode appeals the denial of his Post-Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable Daniel Hall, Circuit Judge on August 9, 2022 an Order issued on October 14, 2022 and filed on October 18, 2022. The Appellant received notice of the judgment on September 27, 2022.



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judge, and pled guilty. Judge Cole sentenced Applicant to fifteen years' imprisonment, provided that upon service of ten years' imprisonment, the rest be suspended, followed by five years' imprisonment. Applicant did not pursue a direct appeal.

On September 10, 2021, a probation violation hearing was held. Applicant was represented by Mr. Brendan Delancy, Esquire. The hearing occurred before the Honorable J. Mark Hayes, II, circuit court judge. Applicant contested the allegations, which comprised of:

1. Applicant admitted to probation he smoked marijuana on April 22, 2021. However, a drug test was administered, which Applicant passed.
2. Also on April 22, 2021, Applicant was caught in possession of a cell phone he purchased from a gentleman. Upon searching the phone, probation discovered illegal searches on the phone. Applicant claimed these searches were conducted by the prior owner of the phone.
3. The following month, probations searched Applicant's bedroom and found methamphetamine. Applicant claimed it belonged to a female friend, who was a known drug dealer and was over at the residence at some point.

A drug test was issued during the probation hearing, and methamphetamine was found in Applicant's system. (Tr. 12). Counsel requested the sample be sent for more intensive testing in the event a false positive was reflected by the test. (Tr. 12-13). The Court found a willful violation of the terms and conditions of his probation and revoked the probation in full. (Tr. 13).

### 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:

Sentencing Modification.

- a. Applicant requests the Court add 375 days of sentencing credit for electronic monitoring of house arrest.
  - i. Judge Mark Hayes did not apply at Applicant's revocation hearing for probation violation and sentencing. The 375 days of electronic monitoring was a condition and part of the Applicant's original sentence and conviction by the circuit court.

At the PCR hearing, Applicant proceeded forward on the allegation that probation

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counsel was ineffective for failing to ensure he would receive credit for time spent on GPS monitoring. 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 his probation was revoked. He stated he did not receive credit for time served on electronic monitoring. He stated he thought Counsel was ineffective for failure to get him credit for time served. On cross-examination, he testified that probation was revoked because he tested positive for methamphetamine. He testified that the probation revocation court's solution to this infraction was to revoke probation in full.

***Counsel Testimony***

Counsel testified that he represented Applicant at the probation revocation hearing. He stated he recalled Applicant being on GPS monitoring when released on probation. He stated he never asked the court to give Applicant credit and that credit for time spent on monitoring is optional. He stated that people receive credit for time spent on GPS monitoring often, but sometimes the judge elects not to give people credit. On cross-examination, Counsel stated that it can be inferred that Judge Hayes found Applicant was not entitled to the credit sought.

**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 probation violation transcript, and the current PCR application. 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

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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. *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

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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.

Regarding probation revocation counsel, though an Applicant has no Sixth Amendment right to counsel in a probation revocation proceeding, the same analysis for ineffective assistance of counsel that applies in other PCR proceedings apply in PCR proceedings against probation revocation counsel. *Turner v. State*, 384 S.C. 451, 455-56, 682 S.E.2d 792, 794 (2009).

This Court finds Counsel was not ineffective on this ground. The Court was not required to give Applicant credit for time spent on GPS monitoring. See S.C. Code Ann. § 24-13-40

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(2013) (rendering credit for time spent on monitoring discretionary). Additionally, this Court finds that the GPS monitoring was a collateral consequence of the underlying criminal infraction, not a term of release specifically. Additionally, this Court finds Counsel did not act unreasonably in failing to request this time, or that a different outcome would have resulted had Counsel made the request. 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), SCRPC 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.

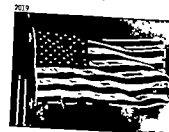
AND IT IS SO ORDERED this 14<sup>th</sup> day of October, 2022.

  
DANIEL D. HALL  
Presiding Judge  
Seventh Judicial Circuit

York, South Carolina.

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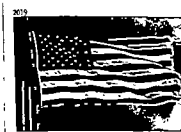
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The Honorable Patricia A. Howard  
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