

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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**Oct 26 2022**

APPEAL FROM BARNWELL COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

Maite Murphy, Circuit Court Judge

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Case No. 2019-CP-06-00305

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Stephon Ternard Robinson, #334700,

Appellant,

v.

State of South Carolina,

Respondent,

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NOTICE OF APPEAL

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Stephon Ternard Robinson appeals the Order of the Honorable Maite Murphy dated August 30, 2022, a copy of which is attached. Appellant received written notice of entry of this Order on October 3, 2022.

October 26, 2022

s/ Nancy C. Fennell

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STATE OF SOUTH CAROLINA )  
COUNTY OF AIKEN )  
Stephon Tarnard Robinson, #334700 )

Applicant, )

v. )

State of South Carolina, )

Respondent. )

IN THE COURT OF COMMON PLEAS  
SECOND JUDICIAL CIRCUIT

Case No. 2019-CP-06-00305

ORDER OF DISMISSAL

This is a Post-Conviction Relief matter. By way of counsel, Applicant Stephon T. Robinson filed his Post-Conviction Relief ("PCR") application on August 5, 2019. An evidentiary hearing was held before the Honorable Maite Murphy on Tuesday, May 24, 2022, at 2:30 p.m., over WebEx. The Applicant was present and was represented by Nancy C. Fennell, Esq., and Assistant Attorney General Julianna E. Battenfield, Esq., represented Respondent. The Court Reporter was Penny Johnson. Applicant and trial counsel, Glenn Walters, Sr., testified.

The Court has also taken into consideration the trial transcript, all arguments of counsel, the testimony presented from Applicant and Applicant's trial attorney, and the exhibits entered into evidence at the hearing: State's Exhibit 1 – February 9, 2022 Order for Discovery, and State's Exhibit 2 – February 2022 Letter Denoting all Discovery Turned Over by the State. The Court concludes that the Applicant has not met the required standards articulated in *Strickland v. Washington*, 466 U.S. 668 (1984), in which Applicant is required to prove by a preponderance of the evidence that counsel was deficient and that he was prejudiced by any deficiency. Therefore, the Applicant has failed to meet his burden of proof of proving the result of his trial would have been different but for the alleged errors of counsel. The application is denied and dismissed with prejudice.

## PROCEDURAL HISTORY

Applicant is currently imprisoned in the South Carolina Department of Corrections. He was indicted at the October 2011 Barnwell County Grand Jury term for burglary first degree (2011-GS-06-00245) and possession of a weapon during the commission of a violent crime (2011-GS-06-00246). He proceeded to trial by jury before the Honorable Doyet A. Early, III, from November 1 to 2, 2011, pursuant to which he was found guilty as charged. The State proved that Applicant broke into Eddie Williams' home at 1:20 PM on the afternoon of February 20, 2011 and had presented a weapon during the burglary. The case was prosecuted by Assistant Solicitor A. Keith McCalister, Jr., and Deputy Solicitor David W. Miller of the Second Circuit Solicitor's Office. Applicant was represented by Glenn Walters, Jr., Esquire. Judge Early sentenced Applicant to twenty years' imprisonment for first-degree burglary and a concurrent five years' imprisonment for possession of a weapon. Applicant timely appealed.

The South Carolina Court of Appeals remanded the case back to the circuit court on February 19, 2014, to "hold a hearing and carefully balance the probative value of Applicants' prior convictions for impeachment purposes against their prejudicial effect." *State v. Robinson*, Op. No. 2014-UP-068 (S.C. Ct. App. filed February 19, 2014). A hearing was held on June 9, 2014, and Judge Early held that Applicant was not entitled to a new trial via an Order filed November 11, 2014. Applicant filed a second notice of appeal.

### Applicant raised one issue:

1. Whether the remand court erred in finding that the probative value of the admission of Appellant's prior convictions for second degree burglary, strong armed robbery, and breaking and entering into a motor vehicle with intent to commit a felony or theft, outweighed the prejudice to him under Rule 609(a)(1), SCRE?

The South Carolina Court of Appeals affirmed in an unpublished opinion: *State v. Robinson*, Op. No. 2017-UP-065 (S.C. Ct. App. filed February 1, 2017). Applicant's February 2017 petition for

rehearing was denied so Applicant then filed a petition for writ of certiorari shortly after in April of 2017. The petition was granted but the Supreme Court of South Carolina soon affirmed the Court of Appeals in a May 18, 2019 published opinion. *State v. Robinson*, 426 S.C. 579, 828 S.E.2d 203 (2019). The remittitur dismissing the case was issued on May 24, 2019.

Applicant filed his post-conviction relief application on August 5, 2019, raising the following issues:

1. Ineffective assistance of counsel for failing to impeach the testimony of the prosecution's witnesses using evidence of inconsistent statements and police notes showing an erroneous testimony using false and fabricated evidence; and

2. Ineffective assistance of counsel for not cross-examining Leanna Gunnels showing mitigating evidence in her statement and also in the police notes. Counsel has the duty to familiarize himself with discovery materials provided by the State. Counsel failed in this regard and his behavior was not objectively reasonable under Strickland. In result of these facts, verdict could have been different.

The State filed its return in December of 2019. The post-conviction relief hearing was originally scheduled for September 10, 2021, via WebEx, but Applicant's counsel requested a continuance. The Honorable Courtney Clyburn Pope signed an order of continuance the same day. The Honorable Robert Bonds later signed an order for discovery on February 9, 2022, requiring the solicitor to turn over any information regarding counsel's failure to properly use prior inconsistent statements and other discovery materials to impeach witnesses at trial. (State's Exhibit 1). The State responded in a February 2022 letter (State's Exhibit 2) which included a copy of the complete closed criminal file. The hearing was then rescheduled for Tuesday, May 24, 2022 via WebEx.

### CURRENT PROCEEDING

The hearing commenced before me via WebEx on May 24, 2022, at 2:00 P.M. Present were Assistant Attorney General Julianna E. Battenfield, PCR counsel Nancy Fennell, Esq., trial counsel Glenn Walters, Jr., Esq., Applicant, and court reporter Penny Johnson. The State put a

procedural history on the record and summarized the two ineffective assistance of counsel claims for the court.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

#### *Summary of Testimony*

Applicant testified he felt counsel Glenn Walters, Jr., was ineffective because he did not impeach at trial the testimony of Eddie Williams, the victim, with the prior statements he had given to the police. Williams gave his first statement on February 20, 2011, and the second on February 21, 2011. Mr. Williams identified the Applicant as one of the two black males who broke into his house in the first statement and reiterated that he still did not know who the second black male was in his second statement. At trial, however, Williams testified he did in fact know who the second black male was – Applicant's co-defendant Reginald Felder. Applicant felt the outcome of the trial could have been different if the inconsistent statements would have been presented.

Applicant also testified he felt counsel was ineffective for not cross-examining Leanna Gunnels with a prior inconsistent statement. She gave her statement to law enforcement on February 21, 2011. She testified she had allowed Applicant to borrow her vehicle on February 19, 2011, and that he had returned it the next afternoon on February 20, 2011. The robbery for which Applicant was convicted occurred on February 20, 2011, on or about 1:20 PM. Applicant felt that inconsistencies in Gunnels' statement to law enforcement and her testimony at trial about the vehicle would have changed the outcome of his trial because it would have provided him an alibi. Gunnels and Applicant shared an on-again, off-again relationship.

Trial counsel Glenn Walters, Jr., testified next that he had thirty-three years practicing criminal law. He testified he had met with Applicant many times in preparation for trial, had reviewed all discovery materials with him, had reviewed all plea offers and all witness statements,

and had introduced two alibi witnesses at trial on Applicant's behalf. Counsel testified he felt Applicant should have taken the plea deal, but that Applicant ultimately chose to reject it and "roll the dice at trial."

Regarding Eddie Williams' statements, counsel testified that any prior inconsistent statements Williams made about the co-defendant would not ultimately matter because Williams was always confident and sure that Applicant was one of the men who had burglarized his home. Counsel testified that Applicant's own brother had also placed him at the scene of the crime that day, so counsel had strategically chosen not to cross-examine Williams with his prior statements to avoid alienating the jury. "The less you say the better sometimes." Counsel noted that he did cross-examine Williams about his lies to law enforcement regarding bullet holes, his being a drug dealer, and more, that he had given a long closing argument highlighting how Williams had lied to law enforcement, and that he had given extensive mitigating at sentencing about this as well.

Regarding Leanna Gunnels' statements, trial counsel testified he did not cross-examine Ms. Gunnels with any prior inconsistencies for a strategic reason. First, counsel said he did not believe the alibi evidence was credible. Counsel admitted he could not remember all of the information about the alibi but said he would typically discuss any potential alibi with a client thoroughly and "tear it apart," then communicate any holes he found in the alibi with his client. Counsel affirmed he had deliberately chosen not to cross-examine Gunnels about any alibi evidence. "You don't want to open up a can of worms in a way that can hurt your client." Ultimately, the Applicant had admitted at trial to driving Gunnels' vehicle on the date of the incident, so cross-examining Gunnels about the vehicle would have possibly done more harm than good. He said he did send an alibi notice to the solicitor and had presented evidence of the alibi on his client's behalf at trial, noting that he could not, however, "suborn perjury" so he had to be

careful in how he presented this particular alibi. He highlighted the fact that the jury did hear the alibi theory from two other witnesses but that they did not buy it as they found Applicant guilty.

*Findings of Fact & Conclusions of Law*

The Court has thoroughly reviewed the record in its entirety. The Court concludes that the Applicant does not meet the required standards articulated in *Strickland*, in which Applicant is required to prove by a preponderance of the evidence that counsel was deficient and that he was prejudiced by any deficiency. Therefore, the Applicant has failed to meet his burden of proof.

All applicants have a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. *Strickland v. Washington*, 466 U.S. 668 (1984); *Lomax v. State*, 379 S.C. 93, 665 S.E.2d 164 (2008). A Post-Conviction Relief Applicant has the burden of proving the allegations in his PCR action, and when alleging that his lawyer was constitutionally ineffective, he must prove that the conduct of her lawyer “so undermined the proper functioning of the adversarial process that [that conduct] cannot be relied upon as having produced a just result.” *Strickland*, 466 U.S. at 686. In evaluating allegations of ineffective assistance of counsel, the PCR court applies the two-pronged test outlined in *Strickland*. First, the applicant must prove that the performance of his lawyer was deficient. *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (quoting *Strickland*). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” *Cherry*, at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690).

In order for an applicant to successfully prove that his defense attorney’s performance was deficient, the applicant must prove “that counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed by the Sixth Amendment.” *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (quotation omitted). “The proper measure of counsel’s

performance remains whether he has provided representation within the range of competence required of attorneys in criminal cases.” *Id.* (citations omitted). The “preeminent authority for all” courts when they are considering an applicant’s claim of constitutional ineffectiveness requires that the courts be highly deferential to a defense lawyer’s performance because:

[I]t is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable . . . . A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.

*Id.* at 444-45, 334 S.E.2d at 815-16 (quoting *Strickland*). An applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. “The burden of rebutting this presumption rests squarely on the defendant, and it should go without saying that the absence of evidence cannot overcome it. In fact, even if there is reason to think that counsel’s conduct was far from exemplary, a court still may not grant relief if the record does not reveal that counsel took an approach that no competent lawyer would have chosen.” *Dunn v. Reeves*, 141 S. Ct. 2405, 2410 (2021) (quotation omitted).

Second, the deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for [the lawyer’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. “Representation is an art, and an act or omission that is unprofessional in one case may be sound of even brilliant in another. Even if a defendant shows that particular errors of counsel were unreasonable, therefore, the defendant must show that they actually had an adverse effect on the defense.” *Hill v. Lockhart*, 474 U.S. 52, 58 (1985) (quotation omitted).

This Court finds trial counsel's testimony particularly credible and that counsel adequately informed Applicant of all pertinent information he needed to make the decision about whether to proceed to trial or enter a plea. This court also finds that Applicant has given this Court no credible evidence to believe otherwise.

#### **1. Ineffective Assistance of Counsel – Eddie Williams' Statements**

The Court finds trial counsel strategically chose to not cross-examine Eddie Williams about his prior inconsistent statements, and that his decision was based on Applicant and counsel's agreed-upon defense strategy. The Court finds Applicant has not met his burden of proving trial counsel was ineffective in making this decision and has also not met his burden of proving he suffered prejudice therefrom, as Eddie Williams was always confident and sure that Applicant was one of the perpetrators. The prior inconsistent statements involved Applicant's co-defendant and did not reflect upon Applicant's own guilt or innocence. Applicant has not met his burden of proving the result of the trial would have been different but-for this alleged error. This claim is denied and dismissed with prejudice.

#### **2. Ineffective Assistance of Counsel – Leanna Gunnels' Statements**

The Court finds trial counsel strategically chose to not cross-examine Leanna Gunnels about her prior inconsistent statement regarding the vehicle she allowed Applicant to borrow, and that counsel's decision was based on Applicant and counsel's agreed-upon defense strategy. The Court finds Applicant has not met his burden of proving trial counsel was ineffective in making this decision and has also not met his burden of proving he suffered prejudice therefrom, as Applicant himself admitted at trial that he had driven Gunnels' vehicle on the date of the crime, rendering any cross-examination on the matter unproductive and possibly harmful to Applicant.

Applicant has not met his burden of proving the result of the trial would have been different but-  
for this alleged error. This claim is denied and dismissed with prejudice.

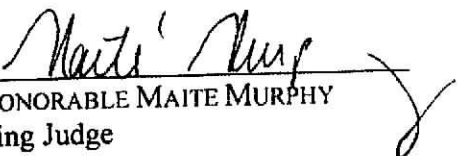
**CONCLUSION**

Based on all the foregoing, this Court finds that Applicant has not proven any constitutional  
violations or deprivations that would require this Court to grant his application for Post-Conviction  
Relief.

**IT IS THEREFORE ORDERED:**

1. This application for Post-Conviction Relief is denied and dismissed  
with prejudice; and
2. Applicant shall remain in the custody of the State within the South  
Carolina Department of Corrections.

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

  
THE HONORABLE MAITE MURPHY  
Presiding Judge

Aiken County, South Carolina