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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

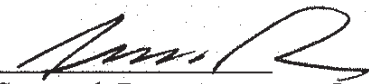
2021-CP-42-03794

Harold Jones, III..... Appellant,
v.
The State, Respondent.

NOTICE OF APPEAL

Harold Jones, III appeals the Honorable Daniel D. Hall's Order of Dismissal filed January 3, 2023.

This 31 day of January, 2023.


Susannah Ross, Attorney at Law
Bar #11205
330 E. Coffee St.
Greenville, SC 29601
(864) 242-0029
Attorney for Appellant

Other Counsel of Record:
Chelsey Marto, Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3970
Attorney for Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS)
FOR THE SEVENTH JUDICIAL CIRCUIT)

Harold Jones III., #251347,)
Applicant,)

Case No.: 2021-CP-42-03794)

v.)

ORDER OF DISMISSAL)

State of South Carolina,)
Respondent.)

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SPARTANBURG COUNTY
AMY W. COY

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This matter comes before this Court by way of Applicant's post-conviction relief application filed November 8, 2021. Respondent made its return on May 25, 2022, and amended on June 20, 2022, requesting an evidentiary hearing be convened. An evidentiary hearing was held on August 9, 2022, at the Spartanburg County Courthouse. Susannah Ross, Esquire, represented Applicant. Assistant Attorney General Chelsey Marto represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Counsel James Hatcher 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 of the Spartanburg County Clerk of Court. In March 2018, the Spartanburg County Grand Jury indicted Applicant for failure to stop motor vehicle when signaled by an officer (2018-GS-42-1662), reckless driving (2018-GS-42-1663), domestic violence of a high and aggravated nature (count one) and possession of firearm during the commission of a violent crime (count two) (2018-GS-42-1664). In May 2018, the Spartanburg

County Grand Jury indicted Applicant for distribution of cocaine within one-half mile of school (2018-GS-42-2282) and possession of cocaine base (2018-GS-42-2283). Suzanne White, Esquire represented Applicant. On October 31, 2018, Applicant pled guilty to a negotiated sentence before the Honorable Grace Gilchrist Knie. The weapons possession charge was *nolle prosequi* indicted. Applicant was sentenced to fifteen years' imprisonment, suspended upon seven months with three years' probation for the domestic violence charge, ten years imprisonment for distribution of cocaine within one half mile of a school, three years' imprisonment for cocaine possession and failure to stop a motor vehicle, and thirty days' imprisonment for reckless driving.

On September 11, 2020, Applicant had a probation violation hearing before the Honorable R. Keith Kelly, circuit court judge. Solicitor Barry Barnette was the prosecutor for the State and Applicant was represented by James Hatcher, Esquire. Applicant's probation was revoked in full.

Applicant filed a timely notice of appeal on September 30, 2020, which was dismissed by written order on February 8, 2021, for failure to provide proof of services for the notice of appeal and proof that the appeal was filed with the Spartanburg County Clerk of Court, as required by Rule 203 SCACR. Applicant filed a motion for rehearing, which was denied on March 30, 2021. The remittitur was issued on May 11, 2021.

First PCR Action: (2021-CP-42-01206)

Applicant subsequently filed his first PCR application on April 16, 2021, in which he alleged the following ground for relief:

1. "Ineffective assistance of Counsel."
 - a. He did not fulfill his obligations to do the things that I ask him to do that I felt were in my best interest."

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Respondent made its return and motion to dismiss on May 4, 2021. On August 30, 2021, the Honorable J. Derham Cole, circuit court judge, issued the order of dismissal denying Applicant's PCR application without prejudice, because of the pendency of his direct appeal.

Summary of Relevant Facts

On March 5, 2018, the Sheriff's Department was called because there was a black Chevy Tahoe leaving the apartment complex. (Plea Tr. 25-26). Officers began following Applicant and another officer talked to the victim, Applicant's girlfriend, about the incident. (Plea Tr. 26). She stated Applicant came over to the apartment, they got into a fight, and Applicant pulled a knife out and threatened to kill her. (Plea Tr. 26). A knife was found on scene and the victim was found with a mark on her arm. (Plea Tr. 26). The victim had a recording concerning the argument they had. (Plea Tr. 26).

Officers followed Applicant, who refused to stop. (Plea Tr. 26). Applicant was arrested after the chase and was found to be driving under suspension. (Plea Tr. 26). He was also charged with reckless driving. (Plea Tr. 26).

Concerning distribution of cocaine, Applicant was involved in a confidential informant buy on August 22, 2017, where Applicant exchanged cocaine for recorded funds within a half-mile of Hillandale Park. (Plea Tr. 27). On November 15, 2017, Investigator Lachika observed a vehicle without tags following another vehicle too closely. (Plea Tr. 27). The investigator initiated a stop and Applicant was the driver. (Plea Tr. 27). His person was searched for driving without a license and cocaine base was found on his person. (Plea Tr. 27). Applicant agreed with all the facts as stated by the prosecutor. (Plea Tr. 26, 28).

At his probation violation hearing, Applicant admitted to the violations and his probation was revoked in full.

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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. "He did not fulfill his obligations to do the things that I ask[ed] him to do that I felt were in my best interest."

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

- 1. Ineffective Assistance of Probation Counsel for:
 - a. Failure to ensure the requested continuance was granted.
 - b. Failure to object to the mention of Applicant's pending charges.
 - c. Failure to ensure Applicant could serve his time in federal custody.
 - d. Failure to inform the Court he would have to serve eighty-five percent of his sentence.

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 stated that he was going to court, and he stated that his federal lawyer told Counsel to continue the case. He stated the case was never continued. He stated that Counsel told him he would get the case continued. Applicant also stated that Counsel was ineffective for failure to object to the reference of charges he was not convicted of. He stated that a criminal domestic violence and a gun charge were both brought up, even though the woman failed the lie detector test. He stated that he picked up a federal gun charge when out on probation. He stated his main issue was that the State was holding him in State custody, not federal custody. Applicant stated that Counsel did not argue that he had to serve eighty-five percent of the sentence to become parole eligible.

On cross-examination, Applicant testified that Counsel failed to ensure the continuance was granted. He stated that the gun charge was a federal offense, not a state offense. He stated he

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was unsure whether his sentences were running concurrently. He stated that his federal charges were mentioned at the probation hearing. He stated that Counsel did not represent him in his underlying criminal proceedings. He stated he was not represented by Counsel when his sentence was imposed.

On redirect, he stated that the firearms offense was his primary probation violation. On recross, he testified that the domestic violence charge was dismissed because the victim passed away.

Counsel Testimony

Counsel testified that he met with Applicant and discussed Applicant's pending federal charge. He stated that Applicant understood the significance of the pending charge and stated that he wanted the probation revocation hearing to be continued until the federal charge was resolved. He told Applicant he would try to secure a continuance. He stated he requested a continuance, but the request was denied. He stated he spoke with Applicant's attorney handling the federal case and that attorney explained to him where everything stood in that case. He stated that they agreed it would be best if the probation hearing was continued. He stated he did not tell Applicant he would have to serve eighty-five percent of the sentence, but that it was apparent from the charge itself. He stated he attempted to get Applicant housed in a federal institution. He stated he spoke to the solicitor about this, but the request was denied by the solicitor. He stated he informed Applicant's federal public defender accordingly. He stated he did whatever his client requested.

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

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County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the plea and probation revocation transcripts, direct appeal records, the prior PCR action 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 Annotated Section 17-27-80 (2003).

Ineffective Assistance of Counsel

Applicant's allegations of ineffective assistance of probation revocation counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant 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 v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 686; *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*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have provided adequate assistance and made all significant decisions in the exercise of reasonable professional

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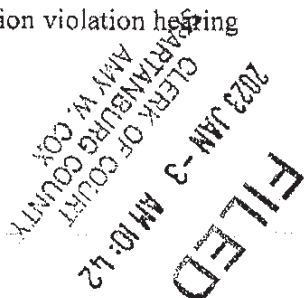
judgment.” *Id.* (citing *Strickland*, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to probation revocation counsel, though an Applicant has no Sixth Amendment right to counsel in a probation revocation proceeding, the same analysis for ineffectiveness that applies in other PCR proceedings involving claims against counsel apply in PCR proceedings against probation revocation counsel. *Turner v. State*, 384 S.C. 451, 455-56, 682 S.E.2d 792, 794 (2009).

Failure to Secure Continuance

Applicant alleges Counsel was ineffective for failure to obtain a continuance of the probation matter until his federal charges were resolved. Counsel requested a continuance until after his federal charges were resolved, and this request was denied. (Tr. 4). Accordingly, Counsel was not ineffective because a continuance was, in fact, requested, and Applicant failed to show what more Counsel could have done to secure a continuance or how that continuance would have impacted the results of the proceedings. Thus, this Court finds the allegation without merit and relief is denied on this ground.

Failure to Inform Court of Parole Eligibility

Applicant claims Counsel was ineffective for failure to inform the Court that he would have to serve eighty-five percent of the sentence to be parole eligible. Counsel credibly testified that this fact was not brought up at the hearing because it was obvious, given the charge. Applicant has failed to show that this was not also obvious to the probation violation hearing judge. Accordingly, relief is denied on this ground.



Failure to Object to Mention of Prior Charges

Applicant claims Counsel was ineffective for failure object to the mention of prior charges. Whether failure to object constitutes deficient performance generally hinges on if a valid trial strategy was utilized. *See Thompson v. State*, 423 S.C. 235, 241, 814 S.E.2d 487, 490 (2018) (finding Counsel was deficient because the failure to object was not related to an otherwise valid trial strategy); *Stokes v. State*, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) (where “counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel”).

Applicant failed to show why they were objectionable, particularly in light of the fact the subsequent charges were the basis of both the violation and the request for continuance Applicant requested Counsel make. Thus, relief is denied on this ground.

Failure to Ensure Applicant was Remanded to Federal Custody

Applicant claims Counsel was ineffective for failure to ensure Applicant could serve out his time in federal, not state, custody. Counsel credibly testified that he requested Applicant be permitted to serve time in federal prison, but this was rejected by the Solicitor. Counsel is not ineffective for failure to procure a favorable outcome upon request. Thus, 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 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

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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), SCRCR 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 22nd day of December, 2022.



DANIEL D. HALL
Presiding Judge
Seventh Judicial Circuit

Yosk, South Carolina.

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
IN THE COURT OF COMMON PLEAS

Harold Jones III, #251347

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

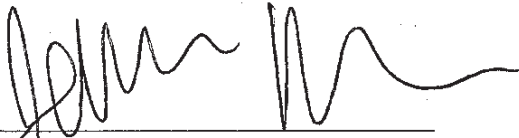
This 4th day of January 2023.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Order of Dismissal has been served upon the applicant by mailing one copy in the United States mail, postage prepaid, addressed to his counsel of record:

**Ms. Susannah Conyers Ross
Ross & Enderlin, PA
330 East Coffee St.
Greenville, SC 29601**

This 4th day of January 2023.



Jordan Hickman
Legal Assistant for Respondent



ALAN WILSON
ATTORNEY GENERAL

January 4, 2023

Ms. Susannah Conyers Ross
Ross & Enderlin, PA
330 East Coffee St.
Greenville, SC 29601

Re: Harold Jones, III, #251347 v. State of South Carolina
2021-CP-42-03794

Dear Ms. Ross:

Enclosed for service is a copy of the filed Order of Dismissal in the above-captioned post-conviction relief case, signed by the Honorable Daniel D. Hall. Please let me know if I can provide anything additional at this time regarding this case.

Sincerely,

/s Chelsey F. Marto
Chelsey F. Marto
Assistant Attorney General

CFM/jbh

Enclosures