

STATE OF SOUTH CAROLINA)
COUNTY OF EDGEFIELD)
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Edward Terrell Chandler, SCDC #329951,)
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Applicant,)
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v.)
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State of South Carolina,)
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Respondent.)
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_____)

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Case No. 2020-CP-19-0085

ORDER OF DISMISSAL

EDGEFIELD COUNTY
CLERK OF COURT
CHARLES L. REEL
2022 JUL 26 AM 9:19

I. INTRODUCTION

This matter comes before this Court by way of a post-conviction relief (PCR) action commenced by Edward Terrell Chandler (Applicant) on March 23, 2020, alleging he is entitled to post-conviction relief based on prosecutorial misconduct, “deliberation error,” and “self-representation denial.” A hearing into the matter convened before the undersigned on December 14, 2021, at the Lexington County Judicial Center. Applicant was present at the hearing and proceeded pro se following this Court’s colloquy advising Applicant of his right to counsel and of the dangers and disadvantages of self-representation pursuant to *Hilton v. State*, 422 S.C. 204, 810 S.E.2d 852 (2018).¹ Applicant testified on his own behalf at the hearing. Assistant Attorney General Lillian L. Meadows represented the State and presented testimony from Deputy Solicitor Suzanne Mayes. In addition to the pleadings in this action, this Court had before it a copy of the Edgefield County Clerk of Court records regarding the subject convictions; Applicant’s records

¹ Ashley A. McMahan was originally appointed to represent Applicant in the instant post-conviction relief action. On December 4, 2020, the Honorable Walton J. McLeod, IV, acting in his capacity as Chief Administrative Judge in the Court of Common Pleas for the Eleventh Judicial Circuit, issued a consent order relieving Ms. McMahan as counsel at Applicant’s request.

from the South Carolina Department of Corrections; a full and complete record of Applicant's direct appeal, including the trial transcript; and the records of the current PCR action.

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling him to post-conviction relief. For the reasons discussed below, this Court denies relief and dismisses this action with prejudice.

II. FACTS & PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Edgefield County Clerk of Court. During its July 2016 term, the Edgefield County Grand Jury indicted Applicant for first-degree criminal sexual conduct (CSC) (2016-GS-19-0383); first-degree burglary (2016-GS-19-0378); strong arm robbery (2016-GS-19-0381); and kidnapping (2016-GS-19-0382). On July 18, 2016, Applicant proceeded to a jury trial before the Honorable Eugene C. Griffith, Jr. Deputy Solicitor Suzanne Mayes and Assistant Solicitor Sutania Fuller of the Eleventh Circuit Solicitor's Office prosecuted the case. Erik J. Drylie and J. Walter Whitmire represented Applicant during the first two days of his trial. On the morning of July 21, 2016, Judge Griffith granted Applicant's motion to relieve counsels and Applicant proceeded pro se for the remainder of the trial.

A. Summary of Evidence Adduced at Trial

Dorothy Peterson (Victim) is an eighty-four-year-old woman retired from a fifty-one-year career in education, forty-eight years in Edgefield County. She is currently the sole proprietor of a funeral home in Johnston. (R. 154–56). Applicant's father lived around the corner in her neighborhood and did odd jobs for Peterson for ten to fifteen years. Applicant assisted in some of those odd jobs. (R. 155–58).

In the early morning hours February 24, 2016, Victim opened the door for Applicant after he frantically rang her doorbell. Although not fully dressed, Victim opened the door slightly. Applicant told her something was wrong with his father, claiming his father was “just shaking.” (R. 159). Victim fetched her phone and began to dial, but Applicant demanded the phone and pushed his way inside as she tried to lock the door. Victim stepped back and fell down. She was frightened by the look in Applicant’s eyes. (R. 158–62).

She backed up and sat on the couch. Applicant demanded her money. Victim testified Applicant took numerous hundred-dollar bills from her billfold that she still had from a recent trip to Florida. Applicant further demanded she write a check to him for one thousand dollars. She said she did not have that much money in her bank account. He told her to write it for “whatever,” and then suggested an amount over seven hundred. She complied. Applicant then asked where her cellphone was. She responded that it was in her car. (R. 162–66).

Applicant then took Victim down the hallway. Looking around, he took her into the bedroom and pulled down her pants. Applicant put his penis in her mouth, then her vagina, and then her mouth once more. Applicant then removed the shoestrings from his shoes and tied Victim up the shoestrings. He tried to use a blanket and a pajama top to stuff into her mouth. He threatened to kill her if “they” come, meaning law enforcement. (R. 166–68).

Applicant demanded to know where Victim kept tape, and Victim responded she had some in the front room. Applicant told her to come on, and Victim responded that she could not walk since her legs were tied with shoestrings. Applicant carried her to the front room, bound her with tape, and also tied her with coil. (R. 168).

Applicant left, saying he was going to cash the check. Victim wiggled her way to the couch and called 911. Victim testified he was wearing a sweat suit. Specifically, he was wearing grey

sweatpants. (R. 169–70). She testified something white went into her mouth, although she did not know if Applicant ejaculated. Victim explained she did not resist because she was in fear for her life. (R. 168–72). Victim reported to the nurse that her vagina was hurting. (R. 191). She identified blood on the couch where she was sitting when she was tied up. (R. 192).

Victim called 911 to report the burglary and reported Applicant was the burglar. (R. 180–81). Victim admitted she told the 911 operator she was not hurt, but she explained “but what I meant by that was, I wasn’t shot or cut up or anyway like that, life threatening.” (R. 181). Victim was brought to the hospital and reported the assault to the nurse. Photographs admitted into evidence at trial showed cuts she sustained during the assault. (R. 187–89).

Victim’s son, Noah, testified he knew Applicant’s father and testified his brother and Applicant were friends when they were little. Applicant’s father’s house is right around the corner from Victim’s house. (R. 133–34). Noah testified Applicant was living with Applicant’s father at the time of the assault. He testified Applicant helped his father with odd jobs. (R. 139–43). However, Applicant’s father no longer does work for Victim. (R. 150).

Noah testified he received a phone call from the dispatcher and promptly drove to his mother’s house. The deputies would not let him inside; however, the door was open, and he observed his mother tied up. (R. 143–45).

Victim’s neighbor and good friend, Darlene Smith, testified she lives around the corner from Victim. (R. 205). She confirmed she and Victim recently travelled to Florida. (R. 207). The morning of the assault, she noticed an extra car in the driveway at around 6:30 a.m. Victim called her nervous and upset. She said she was robbed, and she knew who did it. It was Applicant. Smith saw Victim while she was still tied up. (R. 213–15).

Gary Doran owns a convenience store. Applicant came in his store and attempted to cash a check made out for \$735. He told Applicant he did not have that kind of money that morning. Then Doran heard a BOLO on the police scanner in his store that the police were looking for Applicant. Doran confronted Applicant on this and Applicant claimed that was not his name, as he left the store, he turned around and said his name was "Michael." The store video was entered into evidence. (R. 218–23; 230–32; 237–38).

Deputy Chris Peterson heard a BOLO with a vehicle description on a call for a home invasion and sexual assault. He stopped Applicant's vehicle because it matched the description, which included a Barrett Auto Sales tag. He placed Applicant in investigative detention. Applicant turned around on Deputy Peterson and Deputy Peterson grabbed him and put him in handcuffs. (R. 258–62). Applicant was driving south towards North Augusta at the time he stopped Applicant's vehicle. (R. 264).

Deputy Tracy Wood testified she took Applicant's shoes into evidence. They were missing shoelaces. (R. 267). She also took grey sweatpants that Applicant was wearing at the time of arrest. (R. 271). Applicant also had four \$100 bills, plus some smaller bills. (R. 273).

Linda Herald, an EMS responder, testified she arrived at Victim's house at 7:48 a.m. (R. 286). She observed the eighty-three-year-old female sat on the couch in just a shirt and with tape on her. (R. 286–87). There was tape wrapped around her and a black cord. (R. 287). There were black shoelaces tied around her ankles. (R. 287–88). Blood on the couch came from Victim's private areas. (R. 289–90). She had scratches on her hand. (R. 290). Herald testified that, while at her house, Victim appeared to be in shock. (R. 291–91). She was not overly emotional. (R. 291). However, Herald testified Victim's demeanor changed while they were in route to the hospital. (R. 291–92). Specifically, Herald observed a "horrified look" come over Victim's face. (R. 291–92).

She became upset and asked Herald about the possibility she got AIDS as a result of the sexual assault. (R. 292).

Investigator Morris, the crime scene investigator, confirmed that the \$100 bills taken from Applicant were firm and crisp, as if new. (R. 333). Morris took the shoelaces that were tied around Victim's ankles. (R. 300-01). He attempted to get fingerprints, but there were only smudges. (R. 307). He took vomit into evidence, but SLED would not accept it for testing. (R. 325-26). There was fresh blood, and Victim was still tied up when he arrived. She was transported to the hospital by EMS. (R. 300-01). Subsequently, Nike sent sample shoes to compare with Applicant's shoes. (R. 334).

Nurse Lindsey Stone, an ER nurse, saw Victim on February 24, 2015. She collected Victim's underwear and took swabs for the rape test kit. Victim reported she was gagged and vomited. She had bruising and vaginal bleeding. (R. 369-76; 379). She had an abrasion on the left hand and a laceration on the labia minora. (R. 381). Victim was trembling and crying. She reported soreness in the vaginal area. (R. 386-87). Nurse Stone was the twelfth witness for the State. Following her testimony, Applicant started complaining his attorneys would not do anything he asked. (R. 393-421).

SLED serologist Courtney Thompson testified she found p30 on the oral swab, which is a component of seminal fluid and may be found in pre-ejaculate (which typically does not contain sperm cells and therefore DNA). (R. 426; 434-35). Thompson explained the test was presumptive, not conclusive. (R. 438-39). The fact that it was present orally was an indication that the p30 was not there long. (R. 441-42). Analyst Maryann Boehm testified she was unable to develop a DNA profile from the oral swab. (R. 448).

Prior to the State calling Herb Hedges, a Nike shoes consultant, as a witness, Applicant again moved to relieve counsel and proceed pro se. (R. 480). Judge Griffith granted Applicant's motion at that point. (R. 480–87).

Hedges testified he has assisted law enforcement investigations in at least thirty states as well as in Europe and Australia. (R. 510–11). He identified the shoes Applicant wore as Nike Airmax 90's. He had a sample of the shoes to compare them with. (R. 519). Hedges also identified the shoe laces used to tie up Victim as consistent with the shoe laces Nike used for that model shoe. (R. 521–22).

B. Applicant's Case

After the State rested, Applicant called several witnesses. He first called Alvin Stevens, his boss, to talk about when he was paid. (R. 551). Stevens confirmed on cross-examination that Applicant was living with his father, something the defense up to that point contested. (R. 554). Walker Posey, the funeral director, confirmed Stevens is a contract employee with the funeral home. However, he could not recall Applicant ever working at this funeral home, which apparently came as a surprise to Applicant. (R. 555–56).

Adrena Chandler, Applicant's sister, was Applicant's third witness. She testified he borrowed her car, but she did not know when because she was asleep. The car has a Barrett's tag. (R. 569–70). Apparently, Applicant put her up to testify that she was watching his kids while he was allegedly at work. (R. 567–68).

Applicant recalled Officer Morris. For the State, he confirmed again that Applicant did not have any shoestrings in his shoes when he was arrested. (R. 581). For the defense, he admitted he did not take any pictures of the fingerprint smudges, which he typically does not do if the fingerprint is merely a smudge. (R. 576–77).

Investigator Smith testified about the time of calls on a cell phone and fielded some questions from Applicant on the search warrant. (R. 591–94; 606). He pointed out on cross-examination that the distance between Doran’s store and Victim’s house was two tenths of a mile. It was only a couple hundred yards between Victim’s house and Applicant’s father’s house. (R. 615). Applicant called two more law enforcement witnesses to talk about phone calls, the search warrant, and the seizure of the car. (R. 619–23).

Applicant additionally elected to testify in his own defense. Applicant testified he took his brother-in-law to his sister’s house so “we could party or whatever.” (R. 626). Applicant claimed he worked at Posey’s with his uncle. (R. 626). Applicant also explained to the jury, “On the side, I sold a little drugs, on the side just to have more money.” (R. 626). He assured the jury he knew it was wrong. (R. 626). Applicant claimed he walked in on Victim’s son and another man, and that the son threatened to have him locked up if he told anyone. (R. 627–28). He claimed the son paid him \$250 cash and a check for \$750. Applicant also had money from drug sales. (R. 628–29).

Applicant admitted he had grey pants on at the time of arrest. (R. 629). He admitted he tried to cash the check and they would not cash it. He testified he bought soda and chips, which left him with \$447. He admitted trying to cash the check at Doran’s store, but denied there was a scanner on in the store. (R. 629–30). Applicant claimed he was set up by the Johnston police. (R. 633).

On cross-examination, Applicant admitted he had convictions for possession with intent to distribute cocaine and forgery of a check. He admitted he was trying to cash a check, but claimed it was from Noah because Noah gave him the check to keep a secret that Noah had an affair. (R. 637–38). He admitted he did various odd jobs for Victim in the past and had been to her house. (R.

639). He claimed there were shoestrings in his shoes when they were seized. (R. 640–41). He further clarified he did not need money, he just sold drugs for extra spending money. (R. 648).

The last witness Applicant called was Tracy Wood. On cross-examination, she verified that at the time Applicant was booked for arrest, he was wearing shoes with no shoe laces, a fact he was contesting. (R. 655–56).

C. Verdict & Subsequent Proceedings

Following the multi-day trial, the jury convicted Applicant as indicted on July 22, 2016. Judge Griffith sentenced Applicant to concurrent terms of sixty years' imprisonment for burglary, thirty years for kidnapping, thirty years for CSC, and fifteen years for strong arm robbery.

Applicant filed a timely notice of appeal. Appellate Defender Susan B. Hackett perfected Applicant's appeal by filing a brief with the Court of Appeals on the following issue:

In denying [Applicant]'s motion for self-representation, did the judge err as a matter of law by requiring [Applicant] demonstrate a heightened level of competency in order to waive his right to counsel, and in reliance upon this legal error, did the judge improperly force [Applicant] to choose between his right to self-representation and his right to a speedy trial?

Following briefing, the Court of Appeals affirmed Applicant's convictions and sentences. *State v. Chandler*, 2019-UP-333 (S.C. Ct. App. filed Oct. 9, 2019). Applicant filed a petition for rehearing, which he withdrew by affidavit on November 12, 2019. The case was remitted back to the circuit court on November 13, 2019.

III. ISSUES BEFORE THIS COURT

In his original application for post-conviction relief, Applicant alleged he is being held in custody unlawfully based on the following (excerpted verbatim):

1. "Prosecutor misconduct, miscarriage of justice"
 - a. "Exculpatory evidence, third party guilt"
2. "Appellate lawyer refusal"

- a. "... exculpatory evidence/third party guilt"
 - b. "... deliberation error"
 - c. "... self-representation denial"
3. "Fair Trial"
 - a. "Deliberation error"
 - b. "Self-representation denial"

The State requested an evidentiary hearing through its return, partial motion to dismiss, and motion for a definite statement on November 23, 2020. On December 15, 2021, Applicant filed an amended application to include the allegation of "misleading evidence (tainted), which will be a component to a fair trial violation." Applicant subsequently filed a response on January 15, 2021, objecting to the State's partial motion to dismiss, and stating specifically that he was not raising his allegations in the context of ineffective assistance of trial or appellate counsel but that he was arguing he did not receive a fair trial. He additionally provided the following claims in response to the State's motion for a more definite statement (verbatim):

1. "Prosecutorial Misconduct, the State had DNA evidence that clearly excluded Applicant of participation of criminal sexual conduct. The State continued prosecution, and indictments handed to the grand jury. Also the State was in receipt of third party guilt upon DNA results from SLED. Also the State knowingly fabricated evidence admitted."
2. "Judge failed to excuse alternate jurors after the trial rested. Alternates began deliberation without jurors. Deliberation Error"
3. "Self-representation -- during trial the judge erred of[sic] denial of Applicant's request to proceed pro se after the jury was sworn."

At the start of the evidentiary hearing, Applicant confirmed he was proceeding on these allegations and moved to vacate his sentence pursuant to Rule 60(d)(3), SCRCP, based on alleged fraud upon the court. This Court denied Applicant's motion as untimely but admitted the handwritten motion into the record as Court's Exhibit #1. Further, Applicant confirmed that he was not raising any claims of ineffective assistance of counsel.

Upon Applicant's confirmation that he was proceeding forward on the above-referenced three claims, the State moved to dismiss the claims as direct appeal issues that are not cognizable grounds for post-conviction relief. This Court took the motion under advisement and allowed Applicant to present evidence on these claims. The State subsequently renewed its motion to dismiss at the conclusion of the hearing.

IV. STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act² (the Act) provides that a person who has been convicted of a crime may seek post-conviction relief based upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

² S.C. Code Ann. §§ 17-27-10 to -160.

S.C. Code Ann. § 17-27-20(A). “The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence.” Rule 71.1(e), SCRCPP; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

V. FINDINGS OF FACT & CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After hearing the testimony presented and considering the legal arguments by both parties, as well as the record in this action incorporated by way of the State’s return, this Court proceeds to the claims articulated by Applicant and finds each to be without merit. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

A. Deliberation Error

Applicant first raises a claim of “deliberation error,” alleging the trial court failed to excuse the two alternate jurors prior to deliberations. Specifically, Applicant contends Judge Griffith erred by permitting the two alternate jurors to join the rest of the jurors in the deliberation room. This Court disagrees.

As an initial matter, this claim is directly refuted by the record. At the end of Judge Griffith’s jury instructions, he stated, “I want all 14 of you to go in the jury room and once the verdict form and the evidence comes in the jury room then I will pull my two alternates out. (R. 718). The record indicates the alternates were excused once the evidence was inventoried and the verdict form prepared. (R. 719). The record further indicates that only twelve jurors were polled after the verdict was announced. (R. 722–23).

Moreover, this Court finds this claim a direct appeal issue of trial court error that does not support a cognizable claim for post-conviction relief under any of the statutory grounds. *See Simmons v. State*, 264 S.C. 417, 215 S.E.2d 883 (1975) (finding that alleged trial errors and sufficiency of evidence are direct appeal issues that are not cognizable PCR claims). Free-standing claims of trial court error are not cognizable claims for post-conviction relief, and this prohibition has long been recognized by our appellate courts. *See, e.g., id.* at 423, 215 S.E.2d at 885 (“Errors in petitioner’s trial which could have been reviewed on appeal may not be asserted for the first time, or reasserted, in post-conviction proceedings.”); *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (noting that allegations of trial court error are not cognizable on PCR); *see also Drayton v. Evatt*, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993) (“The *Simmons* rule gives effect to the Legislature’s clear intent that the post-conviction relief procedure is not a substitute for appeal or a place for asserting errors for the first time which could have been reviewed on direct appeal.”); *Stepney v. State*, 278 S.C. 47, 292 S.E.2d 41 (1982) (explaining that issues that could have been raised on direct appeal cannot be considered on PCR application absent claims of ineffective assistance of appellate counsel). Accordingly, Applicant’s request for relief by way of this allegation is **DENIED**.

B. Right to Self-Representation

Applicant next claims he was denied his Sixth Amendment right to self-representation under *Faretta v. California*, 422 U.S. 806 (1975). This Court disagrees, and finds Applicant failed to establish any constitutional violation in this regard.

1. Relevant Details from Applicant’s Trial

Applicant filed a written motion to relieve counsel and proceed pro se on July 12, 2016, approximately six days before his trial was scheduled to start. On July 14, 2016, Judge Griffith

convened a hearing on Applicant's motion. (R. 4). Counsel Drylie informed the court that Applicant wished to represent himself at trial with Counsel Drylie serving as standby counsel. (R. 5). Counsel Drylie further advised the court that there were "no technical legal defenses" available to Applicant on these charges. (R. 8).

The court then heard from Applicant, who explained he wanted to represent himself because the case "does not have all the technicality;" rather, it is a matter of common sense. (R. 9). Upon inquiry from the court, Deputy Solicitor Mayes listed the experts the State planned on calling at trial. (R. 10). Applicant informed the court he had completed some college coursework and was twenty-eight years old. (R. 12). He claimed he studied the case day and night, explaining "I don't go to sleep sometimes, Your Honor." (R. 12).

Deputy Solicitor Mayes advised the court that the State would not oppose the appointment of substitute counsel (R. 12). However, she expressed concerns over Applicant representing himself in light of his history of mental health issues and treatment. (R. 15). She informed the court that Applicant had been evaluated the previous year; however, the doctor that conducted the evaluation was no longer employed with the Department of Mental Health and the State had not been able to serve her with a subpoena. (R. 16). Accordingly, it was the State's position that a full *Blair*³ hearing would be necessary to ensure Applicant had the ability to knowingly and voluntarily waive his right to counsel in a subsequent *Faretta* hearing. (R. 17). Deputy Solicitor Mayes further stated she did not believe the mental health evaluation, orientation assessment, etc., could not be completed in two days. (R. 17). She therefore suggested postponing the case until the next term of court in Edgefield County, which was October 10, 2016. (R. 17).

Judge Griffith then advised Applicant as follows:

³ *State v. Blair*, 275 S.C. 529, 273 S.E.2d 536 (1981).

Okay. Mr. Chandler, what do you think about that? You see what she's saying? She's not telling you no, but let's get all of the pieces up, have you -- the examiner who provided this come back and talk to you again, make certain you're still in good shape. You appear to be today to me, just by looking at you, but since it was over a year ago, kind of updating that, giving you a chance to fully appreciate what you're asking the Court to do. How does that strike you?

(R. 18). Applicant responded that he had been incarcerated the past seventeen months without bond. (R. 18–19). Judge Griffith responded:

Hold on. Let me tell you something. I don't have a bond issue before me today. We came to talk about whether you could represent yourself, whether that would be within the parameters of the *Faretta* case, which outlines when a person, in the Court's estimate, is competent enough to represent themselves. Because if somebody were not competent, not educated, couldn't appreciate all of the dangers of the trial, then the Court has to make an independent decision and evaluation of whether or not that would be appropriate.

And that's what -- considering, you know, that you, just the day before yesterday, asked to have Mr. Driley[sic] set aside, I'm kind of inclined to get all these pieces lined up for October. So here's your choice: You can let Mr. Driley[sic] go forward and we'll start Monday

If you want to represent yourself, that's your request. If you want to do that, I would be much more comfortable in protecting your rights that we get these things done and start this trial in October

(R. 20–21). Judge Griffith then took a brief recess to allow Applicant to speak with Counsel Drylie regarding trial strategy. (R. 22–24).

When they resumed, Counsel Drylie informed the court that Applicant wanted to proceed to trial the following week with Counsel Drylie representing him. (R. 24). Applicant confirmed he wanted Counsel Drylie to continue representing him and formally withdrew his motion. (R. 24).

Four days later, the trial began. A jury was selected, and the trial court heard several motions before recessing for the day. The next day the trial resumed. Assistant Solicitor Fuller and Counsel Whitmire made their opening arguments. Over the next two days, the State called twelve

witnesses; the 911 operator, two of Victim's sons, Victim, Victim's neighbor, the convenience store owner, two Edgefield County Sheriff's deputies, the EMS responder, the Edgefield crime scene investigator, the latent print examiner, and the SANE nurse. (R. 40–392). Following her testimony on the third day of trial, Applicant started complaining his attorneys would not do anything he asked. (R. 393–421).

Specifically, Applicant complained that his attorneys were not doing anything he told them to do. He wanted the trial court to look at some papers. He complained that his defense attorneys were not going to call Investigator Smith, which Applicant thought was important because he was the lead investigator who “made all of these mistakes and they are trying to hide it.” (R. 393–94). Applicant claimed, “Your Honor, they are working together. I will be honest with you and I cannot let that happen. They are working together, him and the Solicitor, they are.” (R. 394). Applicant also let the trial court know that he was scared. (R. 394).

Applicant further complained that his attorneys were recommending he not testify and did not plan on calling any witnesses. (R. 394–95). He claimed Counsel Drylie “has not cross-examined anybody. He cross-examined one person and it really don't matter.” (R. 395). Contrary to Applicant's assertion, his attorneys at that point had cross-examined nine of the State's twelve witnesses, asking a total of 188 questions. Applicant nonetheless pleaded he needed somebody else to represent him or he needed to represent himself. (R. 395).

Counsel Drylie advised the court, “Judge, we just went and talked about possible scenarios that could play out and possible options that we could have and some ways in which I'm leaning on those options.” (R. 396). He further elaborated, “And that's based largely on my experience of having tried a number of cases now and there's really, whatever decision you make, there's risk

and there's reward. . . . And sometimes the reward is pretty minimal and the risk is pretty great.” (R. 396).

Following Applicant's further remonstrations, Judge Griffith found it prudent to move the discussion to the judge's chambers before Applicant said something in open court against his interests. (R. 397–99). When they resumed the proceeding, Judge Griffith initially advised Applicant that he could not dismiss his attorneys after the trial began. (R. 399–402). He further offered a parable about a defendant who represented himself and did fairly well until he failed to understand the trial court's rulings and “got aggravated with me and he got real loud and belligerent and started waving his arms and raised his voice and I warned him.” (R. 403). Applicant replied, “Sorry about that.” (R. 403). At that time, the trial court denied Applicant's motion to represent himself and warned him the jury is watching everything he does and his body language. (R. 404–05).

The solicitors subsequently left the courtroom to allow Applicant to speak to the trial court candidly about the specific things he felt his attorneys should be doing. (R. 413–20). Judge Griffith noted that Applicant discussed some of the questions he wished to be presented as well as any trial strategy. (R. 421). He further stated that Applicant will have an opportunity to discuss these matters prior to the defense presenting its case. (R. 421).

The trial resumed and testimony was taken from two more witnesses—a serologist and forensic DNA analyst. The serologist found pre-ejaculate on the oral swab. (R. 434–35). The DNA analyst testified she could not develop a DNA profile from the swab. (R. 448).

Prior to the State calling Herb Hedges, a Nike shoes consultant, as a witness, Applicant again moved to relieve counsel and proceed pro se. (R. 480). Applicant stated he wanted to call eight witnesses, including four of the State's witnesses he wanted to recall. (R. 482). Judge Griffith

granted Applicant's motion after giving extensive instructions about the dangers of self-representation. (R. 480–87). Counsel Drylie served as standby counsel. (R. 487).

Applicant subsequently cross-examined the State's final three witnesses. (R. 497–501; 523–27; 541–43). After the State rested, Applicant called three of his own witnesses, recalled all eight witnesses he previously requested, and testified in his own defense. (R. 548–658). Applicant additionally made his own closing argument. (R. 673–87).

2. Discussion

Under the Sixth Amendment, an accused may waive the right to counsel and proceed pro se. *Faretta*, 422 U.S. 806; accord. *State v. Fuller*, 337 S.C. 236, 241, 523 S.E.2d 168, 170 (1999). “That right must be preserved even if the court believes that the defendant will benefit from the advice of counsel.” *Fuller*, 337 S.C. at 241, 523 S.E.2d at 170 (citing *United States v. Singleton*, 107 F.3d 1091 (4th Cir. 1997)). However, “[a] defendant’s right to waive the assistance of counsel is not unlimited.” *State v. Winkler*, 388 S.C. 574, 586, 698 S.E.2d 596, 602 (2010) (citing *Fuller*, 337 S.C. at 241, 523 S.E.2d at 170). The request to proceed pro se “must be *clearly asserted* by the defendant *prior to trial*.” *Id.* (emphasis added).

“If the request to proceed pro se is made after trial has begun, the grant or denial of the right to proceed pro se rests within the sound discretion of the trial judge.” *Id.* (citing *Singleton*, 107 F.3d 1091). The trial judge must balance “the defendant’s legitimate interests in representing himself and the potential disruption and possible delay of proceedings already in progress.” *Id.* (citing *United States v. Wesley*, 798 F.2d 1155, 1155–56 (8th Cir. 1986)); see also *United States v. Stevens*, 83 F.3d 60, 66–67 (2d Cir. 1996) (noting that “once a trial has begun, a defendant’s right to represent himself is sharply curtailed, and the judge considering the motion must weigh the prejudice to the legitimate interests of the defendant against the potential disruption of proceedings

already in progress” (citations and internal quotation marks omitted)) (cited with approval in *Winkler*, 388 S.C. at 586, 698 S.E.2d at 602); *cf. Fields v. Murray*, 49 F.3d 1024, 1029 (4th Cir.1995) (en banc) (“A trial court evaluating a defendant’s request to represent himself must ‘traverse . . . a thin line’ between improperly allowing the defendant to proceed *pro se*, thereby violating his right to counsel, and improperly having the defendant proceed with counsel, thereby violating his right to self-representation. A skillful defendant could manipulate this dilemma to create reversible error” (citations omitted)).

Applicant alleges the trial court’s denial of his request to proceed *pro se* after the jury was sworn violated his constitutional right to represent himself. This Court finds that, although Applicant was initially denied the right to represent himself, no constitutional violation occurred because Applicant was subsequently allowed to represent himself and recall the State’s witnesses that were first cross-examined by counsel. Accordingly, Applicant was not prejudiced by the delay.

While Applicant was initially denied the right to represent himself, this Court finds Applicant failed to demonstrate any constitutional violation because he was subsequently allowed to represent himself. Specifically, this Court notes that Applicant’s main complaint about his attorneys was that they were recommending he not testify, they did not plan on calling any witnesses, and that their cross-examination was inadequate. (R. 394–95). After the trial court granted Applicant’s motion to proceed *pro se*, he recalled all of the State’s witnesses he requested, testified on his own behalf, and called several of his own witnesses. He was allowed to make his own closing argument, and fully participate from the point the trial court granted his motion. Accordingly, this Court finds Applicant was not prejudiced by the delay.

To the extent Applicant purports to raise a free-standing claim of trial court error based on the trial court’s initial denial of his motion to represent himself, this Court rejects such a claim as

a direct appeal issue that does not support a cognizable claim for post-conviction relief under any of the statutory grounds. S.C. Code Ann. § 17-27-20(A); *see, e.g., Drayton v. Evatt*, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993) (“[PCR] is not a substitute for appeal or a place for asserting errors for the first time which could have been reviewed on direct appeal.”); *see generally Simmons v. State*, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) (“Generally, post-conviction hearing statutes do not afford relief in the case of alleged errors for which remedies were available before and during the original trial, or by review on motion for a new trial or on appeal. These statutes were not intended to afford a procedure to operate as a substitute for a motion for a new trial, or for an appeal or writ of error; and ordinarily a judgment of conviction may not be challenged on grounds which could have been raised by a direct appeal.”). Here, appellate counsel argued on direct appeal that the trial judge “improperly forced [Applicant] to choose between his right to self-representation and his right to a speedy trial” when he denied Applicant’s pre-trial motion to represent himself. It may not be reasserted in the context of post-conviction relief.

Accordingly, Applicant’s request for relief by way of the allegation that his Sixth Amendment right to self-representation was violated is **DENIED**.

C. Prosecutorial Misconduct

Finally, Applicant contends the State committed prosecutorial misconduct by obtaining indictments and prosecuting him for the instant offenses where the State purportedly had DNA evidence of third-party guilt that excluded Applicant from participation in the criminal sexual conduct. Specifically, Applicant claims the State should have declined to pursue charges against him based on a single hair the SLED expert confirmed did not belong to Applicant. Applicant further asserts the State perpetrated fraud upon the court by knowingly presenting fabricated

evidence to the jury.⁴ This Court disagrees, and finds Applicant failed to present any evidence of prosecutorial misconduct. *See Alabama v. Smith*, 490 U.S. 794 (1989) (finding the burden is on the defendant to prove actual vindictiveness).

1. Relevant Details from Applicant's Trial

At trial, the State presented testimony from two forensic scientists from SLED who analyzed the evidence submitted by law enforcement. SLED serologist Courtney Thompson testified she first examined the items from Dorothy Peterson's sexual assault kit. (R. 428). These items included oral, rectal, and vaginal swabs; fingernail scrapings; pubic hair combings; and Victim's underwear. (R. 428–29). She additionally analyzed clothing submitted from Victim and Applicant. (R. 429–30).

Thompson testified she found p30, a component of seminal fluid found in pre-ejaculate on the rectal, oral, and vaginal swabs. (R. 425–27; 431–33; 439). However, because pre-ejaculate typically does not contain sperm cells, no DNA profile can be developed. (R. 426–27; 434–35). Thompson further explained that p30 can generally only be detected if a test is conducted within approximately seventy-two hours of the p30 being deposited. (R. 440–41). After that time, it starts to break down and erode. (R. 440–41). Thompson further explained that the presence of p30 on the oral swabs indicated that the p30 had not been there long when the swabs were taken because any type of act that would involve swallowing would wash away the forensically relevant components of p30. (R. 441–42).

On cross-examination, Thompson explained that the p30 test is presumptive rather than conclusive because p30 is present in other bodily fluids, albeit at lower levels. (R. 438–39). She

⁴ As aforementioned, Applicant moved to vacate his sentence pursuant to Rule 60(d)(3), SCRPC, based on alleged fraud upon the court at the PCR hearing. This Court denied Applicant's motion as untimely but admitted the handwritten motion into the record as Court's Exhibit #1.

further testified she did not test Applicant's underwear for p30; rather, she examined it for the presence of blood. (R. 439–40).

SLED forensic analyst Maryann Boehm testified that several items were submitted for the possible presence of semen. (R. 445). She explained that the items were first analyzed by SLED's serology department to screen for the presence of biological fluid. (R. 445). Once she received the items, Boehm read the serologist's report to determine what kind of analysis was needed for DNA. (R. 446). The report indicated that several items tested positive for p30 although no sperm cells were found. (R. 446). Boehm testified she nonetheless continued the DNA analysis for those items because only a small portion of the sample is tested by the serologist. (R. 446). She explained that DNA analysis is conducted on a larger portion of the sample with the hope that there is some kind of cellular material from which to establish a DNA profile. (R. 446–47). She further explained that current DNA technology does not provide analysts with information regarding when or how the DNA was placed on an item. (R. 454).

Boehm testified she was able to develop a DNA profile for Victim from the oral swabs although she was not able to identify a second contributor. (R. 447). Boehm additionally confirmed that a DNA profile cannot be developed from pre-ejaculate. (R. 448; 454–55). On Applicant's underwear, she identified Applicant's DNA and a mixture with the major contributor being an unidentified female. (R. 448, 453). She further confirmed that, with the exception of Applicant's underwear, she found either Victim's DNA or DNA profiles insufficient for interpretation on all of the items she analyzed. (R. 450–51; 453–54). For example, the DNA profile developed from Victim's right-hand fingernail scrapings was deemed insufficient for interpretation. (R. 451).

She was then asked about several hairs she collected off a hospital sheet, which was previously admitted into evidence through Nurse Stone. (R. 388–90; 455). Boehm testified she

was unable to develop a DNA profile on two of the hairs while the other hair was insufficient for reliable interpretation. (R. 452). From the hair that was insufficient for reliable interpretation, Item 13.1.3, Boehm was able to perform Y-analysis to determine whether the hair came from a male or female. (R. 456). She stated that she was able to develop a partial profile from the Y-testing although it was not suitable for comparison because there was not much of a profile. (R. 455–56). However, she was able to confirm the Item 13.1.3 hair belonged to a male. (R. 455–56).

Counsel Drylie then questioned Boehm about whether she could compare the partial profile she obtained from the Y-testing on Item 13.1.3 to the profile she developed from Applicant's underwear. (456–57). She explained that, before she compared any known DNA profiles to Item 13.1.3, she deemed the profile not suitable for interpretation. (R. 457). She further explained that she is bound by protocol not to make interpretations on profiles deemed inconclusive for interpretation. (R. 457). Nonetheless, Boehm confirmed that a specific component of the partial DNA profile she obtained from Item 13.1.3 did not match Applicant's. (R. 457–58).

Regarding the hospital sheet the hairs were collected from, Nurse Stone explained that part of the sexual assault exam consists of placing a hospital sheet on the floor and having the patient stand on the sheet while removing their clothing. (R. 370–71). That way, if any debris or foreign materials were to fall off the patient's body or clothing, it would be collected on the sheet. (R. 371–72). The sheet is then wrapped up with the clothing and placed in a bag to be submitted for testing. (R. 371). Nurse Stone testified they additionally collect the sheet from the gurney the patient sat or laid on for the same reason. (R. 390).

The male paramedic that responded to Victim's home, John Pitman, was asked about how Victim was transported from inside her home to the ambulance. (R. 494–95). Pitman testified they put the stretcher by Victim's stairs and assisted her onto the stretcher. (R. 495). He further specified

that the stretcher is covered by a linen sheet, which they replace at the completion of every call. (R. 495–97). Once they arrived at the hospital, Pitman bagged the sheet and gave it to Nurse Stone to turn over to law enforcement. (R. 495–96).

2. Testimony from Post-Conviction Relief Hearing

At the PCR hearing, Applicant testified there were numerous incidents in the investigation that indicate the State committed fraud upon the court and that a third-party is guilty of this crime. He claimed Deputy Solicitor Mayes committed prosecutorial misconduct although it was not entirely her fault because she was “given bad evidence to build a case on.” First, he believed it was improper for the State to present testimony on the positive tests without also bringing up the negative tests. He further explained that the State never showed the DNA evidence nor called Maryann Boehm to testify because the State was purportedly trying to hide this information from the jury and lead them to believe DNA and hair was his. Applicant additionally stated that Boehm’s testimony was inconsistent with the information provided in her report. Specifically, Applicant explained that the report deemed the partial profile from Item 13.1.3 unfit for comparison before Boehm attempted to compare it to the DNA sample obtained Applicant. However, at trial Boehm allegedly testified that she attempted to compare the partial profile to other known DNA profiles but ultimately deemed it unsuitable. Applicant claimed Boehm’s purported erroneous testing “ties into the seed Ms. Mayes planted” that supports his claim of fraud upon the court.

Deputy Solicitor Mayes recalled the extensive evidence the State had compiled against Applicant. Over the years, Applicant had completed a number of odd jobs for the Victim. During the 911 call, the victim identified Applicant as her assailant. She provided the 911 operator with the name and description of Applicant. When law enforcement arrived on the scene, Victim was bound with Nike shoestrings. Later, Applicant was located wearing Nike shoes that were missing

shoestrings. During the State's investigation, they obtained a Nike expert who confirmed that the shoestrings found on the scene were associated with the type of shoes Applicant was wearing. Furthermore, a cashier identified Applicant as the man who had attempted to cash a check under the Victim's name. Store surveillance footage confirmed Applicant was at the store attempting to cash a check while wearing the Nike shoes with missing shoestrings.

Next, Deputy Solicitor Mayes discussed the forensic evidence collected throughout their investigation. Photos showed that the Victim faced extensive injuries from being bound. Likewise, she experienced significant vaginal bleeding from the sexual assault. Nonetheless, the State was unable to collect enough DNA to conduct an analysis. Throughout the trial, the State called several expert witnesses to explain why the sample was insignificant to conduct a DNA analysis. Deputy Solicitor Mayes also discussed the unidentified hair located on the Victim's hospital sheet. Over the course of her hospital visit, Victim was tended to by numerous law enforcement officials, ambulance staff, and hospital personnel. Therefore, the unidentified hair located on the hospital sheet was likely transferred from one of these individuals. The State presented the unidentified hair to the jury and explained what steps they had taken to try and identify the hair.

On cross-examination, Deputy Solicitor Mayes confirmed that the unidentified hair was not suitable for analysis based on SLED standards. While questioned on the report, Deputy Solicitor Mayes stated that she was not qualified in her role as Deputy Solicitor to testify on the results of a DNA analysis. Instead, Deputy Solicitor Mayes relied on the testimony of the forensic scientist who created and/or reviewed the reports. Consequently, she called numerous forensic scientists to testify on the matter during the trial. Deputy Solicitor Mayes opined that both defense counsel and the DNA analysts did an excellent job walking the jury through all of the possible interpretations of the DNA analysis results. Furthermore, Deputy Solicitor Mayes clarified that

there is not always DNA in a sexual assault cases. Ultimately, the lack of DNA was irrelevant in this case because the Victim was able to identify Applicant as her assailant.

3. Discussion

As an initial matter, this Court finds Applicant failed to present any evidence tending to establish bad faith or intent on the part of the State in obtaining indictments and prosecuting Applicant for the instant offenses based on the State's possession of DNA evidence of third-party guilt that purportedly excluded Applicant from participation in the criminal sexual conduct. Additionally, in light of the evidence presented at trial and Deputy Solicitor Mayes' testimony regarding the evidence against Applicant, the State's decision to pursue charges against Applicant constituted a valid exercise of prosecutorial discretion. *See Ex parte Littlefield*, 343 S.C. 212, 218, 540 S.E.2d 81, 84 (2000) ("The South Carolina Constitution and case law place the unfettered discretion to prosecute solely in the prosecutor's hands.").

This Court further finds Applicant failed to present any evidence to support his claim the State attempted to hide information from the jury regarding Boehm's DNA analysis in an effort to lead the jury to believe the DNA and hair belonged to him. The record directly refutes Applicant's claim that the State never presented the DNA evidence to the jury nor called Maryann Boehm. Likewise, nothing in the record supports Applicant's claim that Deputy Solicitor Mayes misled the jury by calling the male paramedic to testify he touched the hospital sheet rather than the gurney sheet. In fact, Pitman clearly testified that he only touched the gurney sheet.

Further, Applicant's allegation that Boehm's testimony was inconsistent with the information provided in her report is not supported by the record. Boehm clearly testified that she deemed the partial profile from Item 13.1.3 unfit for comparison before she attempted to compare it to any other known DNA profiles. All of this information was clearly conveyed to the jury. To

the extent any of her testimony was inconsistent with the report, Counsel Drylie was able to elicit testimony from Boehm on cross-examination confirming the hair could not have belonged to Applicant. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

VI. ALL OTHER ALLEGATIONS

As to any and all allegations raised in the application or at the hearing in this matter and not specifically addressed in this order, this Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds those claims were voluntarily waived and abandoned, and those claims are therefore denied and dismissed with prejudice. S.C. Code Ann. § 17-27-90.

VII. CONCLUSION

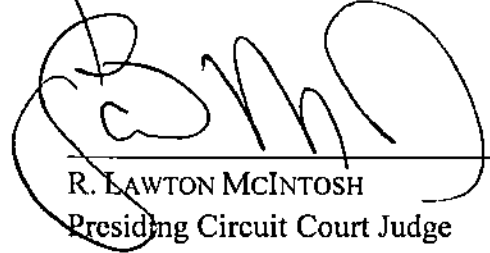
Based on all the foregoing, this Court finds Applicant has not established any other constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief is denied and dismissed with prejudice.

Applicant must file and serve a notice of appeal within thirty days from Applicant's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has the right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 18 day of July, 2022.



A handwritten signature in black ink, appearing to read 'R. Lawton McIntosh', is written over a horizontal line. The signature is stylized and cursive.

R. LAWTON MCINTOSH
Presiding Circuit Court Judge
Eleventh Judicial Circuit

Anderson, South Carolina