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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

G.D. Morgan, Circuit Court Judge


2020-CP-42-02676

Alexander Matthews..... Appellant,
v.
The State, Respondent.

NOTICE OF APPEAL

Alexander Matthews appeals the Honorable G.D. Morgan's Order of Dismissal filed March 17, 2023.

This 31 day of March 2023.


Susannah Ross, Attorney at Law
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330 E. Coffee St.
Greenville, SC 29601
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Attorney for Appellant

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

STATE OF SOUTH CAROLINA)
 COUNTY OF SPARTANBURG)
)
)
 Alexander Matthews, #238028,)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE SEVENTH JUDICIAL CIRCUIT

Case No.: 2020-CP-42-02676

ORDER OF DISMISSAL

This matter comes before this Court by way of Applicant's post-conviction relief application filed August 12, 2020. Respondent made its return on November 5, 2020, requesting an evidentiary hearing be convened. An evidentiary hearing was held at the Spartanburg County Courthouse. Susannah C. Ross, Esquire, represented Applicant. Assistant Attorney General Chelsey F. Marto represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Counsel Richard H. Welchel, Esquire, also testified. After reviewing all records and evidence before this Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. Findings of fact and conclusions of law are set forth below.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In June 2016, the Spartanburg County Grand Jury indicted Applicant for first-degree burglary (2016-GS-42-03026), third-degree arson (2016-GS-42-03027), murder (2016-GS-42-03028). Richard Welchel, Esquire represented Applicant. Abel Gray and Allison Mabbs, Esquires, prosecuted the case. On January 23-25, 2018, Applicant proceeded to a bench trial before the Honorable J.

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Mark Hayes, II, circuit court judge. Applicant was found not guilty of first-degree burglary, and guilty of the lesser-included offense of voluntary manslaughter and as indicted of third-degree arson. Applicant was sentenced to twenty-five years' imprisonment for voluntary and fifteen years' imprisonment for third-degree arson.

Applicant filed a timely notice of appeal on February 2, 2018, that was perfected by Taylor D. Gilliam, Esquire, through filing a brief raising the following issue:

Whether the trial court erred in overruling Appellant's objections to improper character evidence regarding an irrelevant incident between Appellant and his girlfriend, where the testimony was unrelated to the charges at trial, where the discussion painted Appellant in a negative light, and where the testimony yielded information about Appellant's arrest, subsequent conviction, and status as an inmate at Evans Correctional Facility.

The South Carolina Court of Appeals affirmed the convictions by unpublished opinion. *State v. Matthews*, 2020-UP-180 (S.C. Ct. App. filed June 10, 2020). The remittitur was issued on August 19, 2020.

Summary of Relevant Facts

On June 17, 2014, Spartanburg police and firefighters responded to a call about a house fire. (Tr. 16, 20, 27). Upon arrival, emergency responders discovered the body of Ms. Willie Mae Gray inside the home. (Tr. 16, 27-28). Emergency responders removed the victim and began resuscitation efforts but stopped after determining she was already deceased. (Tr. 17, 21-23). The autopsy determined that she had suffered significant trauma to her head and neck, puncture wounds, and a fractured hyoid bone, indicating manual strangulation. (Tr. 229-35). Investigation revealed that the fire was likely set intentionally, and that a fire safe, dresser drawers, and jewelry boxes inside the house had been rummaged through and emptied. (Tr. 47-48, 64-65).

A few months later, while canvassing the neighborhood, investigators encountered Ms. Gray's neighbor and friend, Samantha Brewton, as well as her sister, Sandra Brewton. (Tr. 96-

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97). Sandra Brewton had been in a relationship with Applicant and he had lived with her at the time of Ms. Gray's death. (Tr. 98). On the night of June 17, 2014, Applicant came home late, smelling like smoke. (Tr. 141). Sandra noted that he denied smelling like smoke but had taken a shower fully clothed. (Tr. 141-42). She provided officers with a prescription pill bottle belonging to Applicant and bearing the name "Spenser Middleton" that had been modified with tin foil to be used as drug paraphernalia. (Tr. 99-100).

Investigators conducted an interview with Applicant, who had since been incarcerated in the Evans Correctional Institution on unrelated charges. (Tr. 101). Applicant explained during the interview that Spenser Middleton is his cousin's name that he occasionally used as an alias. (Tr. 105). He also stated that he was not involved with the death of Ms. Gray. (Tr. 103). However, scrapings taken from Ms. Gray's fingernails led to a DNA match with someone named Spenser Middleton. (Tr. 106-07). Investigators conducted another interview with Applicant where they obtained buccal swabs. (Tr. 108-09, 172). The DNA collected in those swabs matched the fingernail scrapings taken from Ms. Gray's body. (Tr. 197-99).

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. Counsel was ineffective for failing to petition the Court, prior to to suppress the State's 609 Notice, due to the prejudicial effect it would have clearly out weights its probative value. Evidence of Applicant's prior convictions for Voluntary Manslaughter and Burglary was inadmissible for impeachment purpose in trial for Murder, Arson and Burglary. Prior convictions had nothing to do with Applicant's credibility and evidence was more prejudicial than probative; especially, in light of the charged offenses. cf. *State v. Bryant*, 369 S.C. 511, 633 S.E.2d 152.
 - b. Counsel was ineffective for failing to petition the Court, prior to trial, to suppress the State from introducing and entering into evidence an

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audio recording interview between Applicant and two Spartanburg Police Investigators, when Applicant was never advised of his Miranda Rights; nor did Applicant waive his right to self-incrimination; nor did counsel object when the recording was introduced was prejudicial to the defense. In dealing with interrogations Courts "will not presume" that a defendant has been effectively apprised of his rights and that his privilege against self-incrimination has been adequately safeguarded from a silent record. The record further does not show that any warnings has been given or that any effective alternative has been employed; nor can it be said that the Applicant knowingly and intelligently waived those right, "be assumed" from a silent record. *Miranda v. Arizona*, 384 U.S. 436 (1966); *Boykin v. Alabama*, 89 S.Ct. 1709 (1969).

2. Cumulative Error Doctrine

- a. The Cumulative Error Doctrine" provides relief to a party when a combination of errors may be insignificant by themselves has the effect of preventing a party from receiving a fair and impartial trial, and the cumulative effect of these errors affected the outcome of Applicant's Bench Trial. The purpose of the Cumulative Error Doctrine is to address such possibilities. *Pavel v. Hollins*, 261 F.3d 210. Applicant shall argue, the above two (2) grounds (Ground One & Two) for relief, when combined, in a Bench Trial has the cumulative effect of preventing Applicant, as in this case, from receiving a fair and impartial trial from the Bench. cf. *State v. Thompson*, 420 S.C. 386, 803 S.E.2d 44 (2017).

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

1. Ineffective Assistance of Counsel

- a. Failure to procure and review discovery with Applicant.
 - i. Failure to share the SLED report with Applicant.
- b. Failure to effectively communicate with Applicant about the case.
- c. Failure to object to the Applicant's prior convictions being presented to the Judge at the bench trial.
- d. Failure to move to suppress Applicant's police statement.
- e. Failure to suppress Applicant's DNA sample because of lack of consent to the search.
- f. Failure to properly cross-examine Sandra and Samantha Brewton
- g. Failure to ensure Applicant understood his decision to waive a jury trial and proceed to a bench trial.

All other allegations raised in his initial application and amendments are deemed waived

and abandoned and, accordingly, will not be addressed in this order.

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Summary of the Testimony

Applicant Testimony

Applicant testified that he understood the proceedings. He stated he did not think Counsel was effective. Specifically, he stated that Counsel did not get any papers for him. He stated Counsel did not do anything for him. He stated he previously spent nineteen years in prison before and that he "had learned [his] lesson the first time." He stated it was his decision to proceed to a bench trial. Applicant stated he believed it was not right for the judge to be informed of his prior convictions.

Concerning this incident, Applicant stated he broke up a fight. He stated he was already in Evans Correctional Institution for an unrelated incident when the police went to speak with him about this incident. He stated he was not Mirandized when he was questioned in Evans and that he felt like he could not leave. During the statement, he stated he talked about the fight and that he never signed anything when the statement was made, how the people fighting with the victim stole from the victim. He stated he spoke with the police because the police wanted to talk to him and he had nothing to hide. Applicant stated he thought the police obtained a search warrant for his DNA. He stated that he did not remember if he gave the police consent to obtain his DNA. Applicant stated that his ex-girlfriend lied at his trial when she said Applicant came home smelling like smoke. Applicant stated he was on seizure medication at the time. He stated he never saw the SLED report concerning the DNA analysis. He testified he knew about the DNA on the victim at the trial. He denied turning his pill bottle into a crack pipe. He stated that the medication bottle had Spencer Middleton's name on it. Applicant testified that this was mislabeled because Applicant's cousin's name is Spencer Middleton. He stated he is often confused with his cousin. He stated he was upfront with the police and that he never killed the

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victim. He claimed he was confused during the whole ordeal because he was being accused of something he did not do.

On cross-examination, Applicant claimed his visits with Counsel at the jail revolved solely around wellness checkups. He stated he never saw any of the discovery or evidence in the case, but that Counsel explained everything to him. He testified he went to a bench trial, despite Counsel informing him this was a bad idea, because someone else told him to go to a bench trial. Applicant testified at trial and that his testimony at trial was the same as at the PCR hearing. Applicant stated he could not leave during the police interview at Evans. He stated that the sisters that testified at his trial lied and that he was "talking to one of the sisters" at the time.

Applicant stated that his signature and the signature on the search warrant looked somewhat alike. Applicant stated that he thought his DNA matched the DNA under the victim's fingernail because he broke up the fight. Applicant stated he was in the fight for his life, and he was scratched during it. He stated that his ex-girlfriend did not state that he smelled like smoke until after he went to prison. He stated that the relationship was "alright" before he went to prison, and it deteriorated. He stated he did not remember if Counsel objected to admission of the Miranda statement. Applicant stated he decided to speak to the police on his own because he had nothing to hide.

Counsel Testimony

Counsel testified that the investigation into the incident was ongoing for a long time before he became involved. Counsel testified that the police statement occurred before his involvement in the case. Counsel testified that Applicant wanted his police statement entered into evidence to explain why he did not commit the crime. He stated that a CODIS match came back to Applicant. Counsel thought a jury trial was preferable to a bench trial because the likelihood

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of conviction at trial was higher with a bench trial than with a jury trial. Counsel testified he did not move to suppress Applicant's prior convictions from coming in at trial because the judge that would hear that motion was also the sole decider of facts in the bench trial. Counsel stated this was the only bench trial he has ever had in a murder case. He stated he argued the *Miranda* issue at trial.

On cross-examination, Counsel testified that he told Applicant it was a bad idea to go to a bench trial and that he had a much better chance of success at a jury trial. He testified that he would not have advised Applicant to testify. Counsel testified that the Court engaged Applicant in a colloquy concerning his decision to proceed forward to a bench trial.

Findings of Fact and Conclusions of Law

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. Before this Court are the Spartanburg County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the trial transcript, direct appeal 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

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

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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(c), SCRCP (“The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence.”). Reasonableness is determined by the “variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant,” and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel’s performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually “countless” ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel’s deficient performance must have prejudiced the applicant so that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694.

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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.

Failure to Review Discovery

Applicant claims Counsel was ineffective for failure to review discovery. This Court does not find this credible. Additionally, this Court finds that Applicant failed to show how he was prejudiced by any alleged failure on this ground. Accordingly, relief is denied on this ground.

Failure to Effectively Communicate with Applicant

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

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

Applicant failed to state with any specificity what was not discussed or how that impacted the results of the proceedings. Accordingly, Applicant has not met his burden of proof concerning this allegation and denies relief as a result.

Failure to Object to Admission of Prior Convictions

Applicant claims Counsel was ineffective for failure to object to the admission of Applicant's prior convictions. This Court finds Counsel's decision not to object was reasonable. Specifically, Counsel reasonably concluded that objecting would be fruitless because the prior convictions would be considered by the Court, with or without an objection, because the judge ruling on the objection was also ruling on the trial. Further, there is no evidence of prejudice, especially since this was a bench trial. Accordingly, relief is denied on this ground.

Failure to Move to Suppress the Police Statement

Applicant claims Counsel was ineffective for failure to move to suppress the police statement. Counsel credibly testified that Applicant wanted the statement entered at trial. Counsel is not deficient for acting on behalf of his client and accommodating his requests, even if proven unsuccessful. Additionally, there has been no showing of prejudice, particularly because this was a bench trial. Accordingly, relief is denied on this ground.

Failure to Suppress the DNA Sample

Applicant claims Counsel was ineffective for failure to suppress the DNA sample for lack of consent. The transcript reflects that consent was given. (Tr. 107-10). Counsel is not deficient for failure to make a motion on a frivolous ground that runs counter to the evidence. Further, as

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highlighted above, Counsel was not unreasonable in his decision to be hesitant to pursue motions and objections because the Judge was both the determiner of fact and of law. There has also been no showing that the motion would have been successful or would have impacted the results of the proceedings, if successful. Accordingly, relief is denied on this ground.

Failure to Effectively Cross-Examine

Applicant claims Counsel was ineffective for failure to effectively cross-examine Sandra and Samantha Brewton. This Court finds Counsel's cross-examination strategy was reasonable. Concerning Samantha Brewton, Counsel addressed her poor relationship with the victim, how she had previously stolen from the victim, how she used to smoke on her porch, and her prior criminal history, which included arson. (Tr. 135-37). Concerning Sandra Brewton, Counsel questioned her about handing the pill bottle over to the police nine months after the victim passed away, prior accusations against her sister by the victim, her belated discussions with the police, her inconsistencies when speaking with the police, and her initial denial of any wrongdoing on Applicant's part. (Tr. 150-61). Both approaches are reasonable, and this Court has been presented with no other alternative that would have led to a different outcome at trial. Accordingly, this Court finds Applicant has failed to establish both deficiency and prejudice and relief is denied as a result.

Failure to Ensure Applicant Understood Waiver of Jury Trial

Applicant claims Counsel was ineffective for failure to ensure he understood the waiver of the jury trial. "The right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury; to be fully informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to be fully heard in his

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defense by himself or by his counsel or by both." S.C. Const. art. I, § 14. The rights guaranteed by Article I, § 14 the South Carolina Constitution and the Sixth Amendment of the United States Constitution can be waived by the accused in circumstances showing that the waiver was knowingly and voluntarily made.

The transcript reflects that the Court engaged Applicant in a thorough colloquy concerning his decision to waive a jury trial in favor of a bench trial. (Tr. 8-12). Further, Counsel credibly testified that he strongly encouraged Applicant *not to waive* his right to a jury trial in favor of a bench trial. This was substantiated by Applicant's testimony that it was his own decision to proceed to a bench trial. Applicant decided to waive this right against Counsel's advice anyway. Counsel is not deficient for failure to ensure Applicant followed his advice. Additionally, this Court has been presented with no evidence to question that Applicant waived his right knowingly and voluntarily. 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.

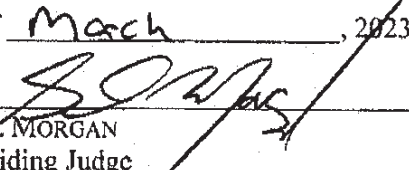
This Court notifies Applicant that he must file and serve a notice of appeal within thirty days of receipt by counsel of the judgment entry's written notice to secure appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 995 (1991), an Applicant has the right to appellate counsel's assistance in seeking review of the final of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

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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 13th day of March, 2023.



G.D. MORGAN
Presiding Judge
Seventh Judicial Circuit

Spartanburg, South Carolina.

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

Alexander Matthews, #238028

Applicant,

v.

State of South Carolina,

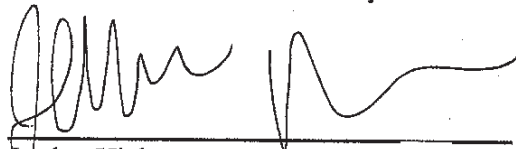
Respondent.

AFFIDAVIT OF SERVICE

The undersigned hereby certifies that a true copy of the filed Order of Dismissal (2020-CP-42-02676) has been served upon the applicant by mailing one copy in the United States mail, postage prepaid, addressed to:

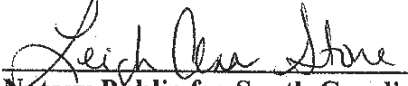
Susannah C. Ross, Esquire
Ross & Enderlin, PA
330 East Coffee St.
Greenville, SC 29601

This 21st day of March 2023.



Jordan Hickman
Legal Assistant for Respondent

SWORN to before me this 21st day of March 2023.


Notary Public for South Carolina.
My Commission Expires: May 16, 2029