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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

William A. McKinnon, Circuit Court Judge


2021-CP-42-04255

Jarvis Stripling..... Appellant,  
v.  
The State, ..... Respondent.

NOTICE OF APPEAL

Jarvis Stripling appeals the Honorable William A. McKinnon's Order of Dismissal filed April 4, 2023.

This 10 day of April, 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 )  
 )  
 Jarvis Stripling, #378264, )  
   ) Applicant, )  
   ) )  
   ) v. )  
   ) )  
 State of South Carolina, )  
   ) Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 FOR THE SEVENTH JUDICIAL CIRCUIT

Case No.: 2021-CP-42-04255

**ORDER OF DISMISSAL**

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This matter comes before this Court by way of Applicant’s post-conviction relief application filed December 20, 2021. Respondent made its return on January 28, 2022, requesting that an evidentiary hearing be convened. An evidentiary hearing was held on June 8, 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 Charles Snyder, III, and prosecutor J. Edward Hunter 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 from the Spartanburg County Clerk of Court. During its June 2017 term, the Spartanburg County Grand Jury indicted Applicant for two counts of kidnapping (2017-GS-42-3123 and -3124) and first-degree burglary (2017-GS-42-03125). During its July 2018 term, the Spartanburg County Grand Jury indicted Applicant for attempted armed robbery (2018-GS-42-04083). During its August 2018 term, the Spartanburg County Grand Jury indicted

Applicant for murder (count one) and possession of a weapon during commission of a violent crime (count two) (2017-GS-42-03122). Applicant was represented by Charles W. Snyder, III, Esquire. Assistant Solicitor James E. Hunter and Allison Mabbs, Esquires, of the Seventh Circuit Solicitor's Office, prosecuted the case. On November 6-8, 2018, Applicant proceeded to trial before the Honorable J. Derham Cole and a jury. Applicant was found guilty of first-degree burglary, two counts of kidnapping, and one count of attempted armed robbery. He was found not guilty of murder and possession of a weapon during the commission of a violent crime. Judge Cole sentenced Applicant to thirty years' imprisonment for each count of kidnapping and first-degree burglary and twenty years' imprisonment for attempted armed robbery. These sentences were set to run concurrently.

Applicant filed a timely notice of appeal on November 14, 2018, that was perfected by Joanna K. Delany, Esquire, through filing a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion. *State v. Stripling*, Op. No. 2020-UP-328 (S.C. Ct. App. filed Dec. 2, 2020). The remittitur was issued on December 21, 2020.

### Summary of Relevant Facts

Applicant and his co-defendant, Alicia Pilgrim, grew up together. (Tr. 55). Pilgrim and Francisco Villar made an illegal deal where Pilgrim would marry Villar's cousin, who was not in the country legally, for money. (Tr. 55). Villar did not want to pay upfront, so Pilgrim developed a plan to rob him, because she knew he had money from drug dealing. (Tr. 55). Pilgrim went to Villar's home early in the morning, when two black men rushed into the house, both covering their faces. (Tr. 56). This was captured on video surveillance. (Tr. 56). Pilgrim and Villar ordered everyone to get on the ground. (Tr. 56). After a while, Villar stopped cooperating and

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pulled a pistol to shoot the burglars. (Tr. 56). Villar was killed after suffering two gunshots. (Tr. 223). In a statement, Pilgrim identified Applicant as the shooter. (Tr. 57-58).

**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. “Applicant received ineffective assistance of counsel because attorney failed to raise jury objections concerning presenting new videos and pictures at trial.”
  - a. “There were several known and unknown parts where it was clearly a conflict; you cannot present new evidence at trial.”

At the PCR hearing, Applicant proceeded forward on the following allegations, as outlined in the amended application, filed June 6, 2022:

1. Ineffective assistance of counsel:
  - a. Failure to move to suppress the identification of the Applicant by witness Dixie Wright and object to her in court identification of Mr. Stripling.
  - b. Failure to present an expert to educate the jury on how suggestion and memory triggers can result in false eyewitness identification.
  - c. Failure to object to the admission of home surveillance video and photo stills thereof if not produced in discovery.
  - d. Failure to review home surveillance video and photo stills thereof with Mr. Stripling prior to trial.
  - e. Failure to object to leading redirect of witness Dixie Wright.
  - f. Failure to object to leading of witness Alicia Pilgrim.
  - g. Failure to object to leading investigator Louis Maceo Nelson or question why if he believed witness Alicia Pilgrim he then charged a third party, Efrain Rivera, with the murder.
  - h. Failure to object to Investigator Louis Maceo Nelson bolstering witness Alicia Pilgrim’s identification of the Applicant by stating she seemed truthful.
  - i. Failure to object to the removal of juror number 193.
2. Due Process Violation due to the removal of the juror number 193 and compromising Applicant’s right to a fair 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.

**Summary of the Testimony**

*Applicant Testimony*

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Applicant testified that he understood the purpose of a PCR hearing. He stated that he pled not guilty and proceeded to trial. He stated he thought Counsel was ineffective because he wanted his Counsel to object at trial. He stated he never saw the video before trial. Applicant testified that he never saw still shot photographs from the video until trial. Applicant stated that he is five feet eight inches tall and the victim stated that the shooter was six feet tall. He testified he wanted his daughters to testify at trial and that he thought their testimonies would have helped. Applicant stated he would have testified about the tattoos at trial. Applicant testified that Dixie identified him at trial and that Counsel did not object to this identification. Applicant testified that a co-defendant's charges were dropped and Counsel did not make a big deal of this at trial. He testified he wished Counsel objected more.

On cross-examination, Applicant testified that Pilgrim testified at trial. He stated that Dixie Wright previously knew him. Applicant testified that Counsel reviewed his discovery with him, though he confirmed he did not see the videos until trial. He testified he saw the interview with his co-defendant. Applicant stated that he wanted Counsel to challenge Dixie's testimony. He stated he did not know the deceased in the case and that he only met him as a part of a drug deal one time. Applicant testified that he did not know Dixie well. He stated he knew Pilgrim and saw her regularly. He stated he knew his co-defendant.

On re-direct, Applicant testified that his co-defendant did not testify at trial. He stated Dixie told the investigators she was not sure who the shooter was and only identified him later on. On re-cross, Applicant testified that Pilgrim identified him as the shooter and that he was ultimately identified based upon his tattoos. Applicant stated Counsel did not object to testimony concerning Dixie's identification based upon still shots from the video.

*Jermyiah Stripling Testimony*

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Jermiah stated that she is fifteen years old. She stated she understood her grandmother provided an alibi at Applicant's trial. Concerning the night of the incident, she testified that she was laying on the blow-up mattress and woke up every fifteen minutes to ensure Applicant was beside her. She stated that none of her other family members spoke with her about why her father was arrested because it would make her cry. She stated that she could have spoken at Applicant's trial if asked to do so.

On cross-examination, Jermiah testified that she was eleven years' old at the time of trial and slept beside Applicant the night of the incident. She stated that she slept with her father's hand on her. She stated she thought Applicant did not want her to testify at his trial because he wanted to protect her.

#### *Ajah Stripling Testimony*

Ajah testified that she is eleven years old. She stated she recalled laying on the bed with her father at the time of the incident. She stated they were all at her grandmother's house.

On cross-examination, Ajah testified she did not remember attending the trial, but that she saw Applicant's mugshot on the news. She stated she did not recall when the news came out about Applicant. She stated she was awake at one in the morning that night. She stated she was eight or nine at the time of the incident. She stated she would have testified at the trial if called to testify. She stated she remembered that day because that was the same day Applicant taught her how to play a PlayStation.

#### *Counsel Testimony*

Counsel testified that he met with Applicant "at least a dozen times" where they discussed the case, talked about his mother and made mention of discovery which Applicant "at least twice." Counsel recalled that the surveillance was very important to this case.

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and he “could not imagine a scenario where [they] would not have reviewed the videos”.

Counsel testified that this case was always going to trial and that Applicant had maintained his innocence throughout. Counsel stated that Pilgrim and Dixie’s testimony, along with the hairline from the surveillance video, were important to the verdict. Counsel admitted that he could not say if he saw any reason to object to the videos, nor did he think it was necessary to proceed with pre-trial motions in this case.

Counsel recalled there were issues with the removal of certain jurors. Counsel stated that “they wanted to acquit for murder.” He testified that he felt he had given the jury a lot to think about and had tried a good case. Counsel stated that he did not object to bolstering but he had objected to hearsay. On redirect, Counsel stated that he places objections strategically and misses some because he is “not perfect” but he “couldn’t have done anything differently”.

#### ***Prosecutor Testimony***

Prosecutor testified that the evidence in this case consisted of surveillance video, eyewitnesses. Regarding “hand of one hand of all,” Prosecutor acknowledged that they could not say which one shot Victim and that is why they could not find him guilty of murder. Prosecutor stated that the codefendants had stronger cases than that of Applicant. Prosecutor testified that pre-trial motions were denied in front of Judge Cole. Prosecutor stated that there was no leading throughout the trial and if any bolstering took place, then he could have asked the question in a different way and it would not have changed the outcome as it was not prejudicial.

#### **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 County Clerk of Court Records, Applicant’s South Carolina Department of Corrections Records,

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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 upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel's performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel's actions fell outside of the zone of "reasonableness under prevailing professional norms." *Strickland*, 466 U.S. at 688. *See also* Rule 71.1(e), 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 in 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 the

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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. 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 Move to Suppress Identification***

Applicant claims Counsel was ineffective for failure to move to suppress the identification and for failure to object to her in-court identification. The United States

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Constitution's Due Process clause prohibits police eyewitness identification techniques that are "so suggestive as to violate due process." *Manson v. Brathwaite*, 432 U.S. 98, 105 (1977). An identification procedure must be *both* unnecessarily suggestive and conducive to irreparable misidentification in order to violate due process. *State v. Traylor*, 360 S.C. 74, 81, 600 S.E.2d 523, 526 (2004). "Only if [the procedure] was suggestive need the court consider the second question—whether there was a substantial likelihood of irreparable misidentification." *State v. Moore*, 343 S.C. 282, 287, 540 S.E.2d 445, 447–48 (2000). Factors considered in analyzing whether the identification was mistaken include “the opportunity of the witness to view the criminal at the time of the crime, the witness’ degree of attention, the accuracy of the witness’ prior description of the criminal, the level of certainty demonstrated by the witness at the confrontation, and the length of time between the crime and the confrontation.” *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972).

Here, there was no prejudice suffered by Counsel’s decision not to move to suppress or object. One of Applicant’s co-defendants testified at his trial. (Tr. 134-57). Additionally, still shots from the video of were entered at the trial, featuring specific neck and hand tattoos that matched those of Applicant’s. (Tr. 167-68, 184-85, 200). This Court finds that even if there was a *Biggers* hearing, there was sufficient evidence to convict and the results at trial likely would not have changed as a result. Accordingly, relief is denied.

***Failure to Present Expert***

Applicant claims Counsel was ineffective for failure to present an expert on how suggestions and memory can result in faulty eyewitness identification. Applicant has failed to show that any reasonable attorney would have surely presented such testimony at such testimony would have consisted of. *See Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538,

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540 (1995) (To show counsel was ineffective by failing to call a witness, the witness(es) must be produced at the PCR evidentiary hearing or their testimony must otherwise be presented, consistent with the rules of evidence); *Clark v. State*, 315 S.C. 385, 434 S.E.2d 266 (1993) (Mere speculation regarding the witness's testimony is insufficient to establish prejudice). Accordingly, relief is denied on this ground.

***Failure to Review/Object to Admission of Home Surveillance Footage and Photos***

Applicant claims Counsel was ineffective for failing to object to the admission of home surveillance footage and photographs and for failing to review this footage with his client. The basis for the objection was that they were not produced in discovery. This is without merit. Counsel testified that this evidence was extremely important to the case and that he could not imagine that he failed to review this with Applicant. Therefore, it is most likely that he did review that evidence with Applicant, and therefore this claim for relief is denied.

***Failure to Object to Leading on Redirect of Dixie Wright, Alicia Pilgrim, and Louis Nelson***

Applicant claims Counsel was ineffective for failure to object to Prosecutor's leading questions directed at Dixie Wright, Alicia Pilgrim, and Louis Nelson. This Court finds Counsel and Prosecutor both credible in their assertions that even if leading questions were asked, they did not impact the outcome at trial. Counsel is not expected to object to every single objectionable thing at trial to avoid findings of ineffectiveness. That is, Applicant has not shown that any reasonable attorney would have objected to the leading questioning. Accordingly, relief is denied on this ground.

***Improper Bolstering***

Applicant claims Counsel was ineffective for failure to object to improper bolstering. "Improper bolstering is 'testimony that indicates the witness believes the victim but does not

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serve some other valid purpose.” *Chappell v. State*, 429 S.C. 68, 75, 837 S.E.2d 496, 499-500 (Ct. App. 2019) (quoting *Briggs v. State*, 421 S.C. 316, 325, 806 S.E.2d 713, 718 (2017)).

“Improper bolstering also occurs when a witness testifies for the purpose of informing the jury that the witness believes the victim, or when there is no other way to interpret the testimony other than to mean the witness believes the victim is telling the truth.” *Id.* “However, an expert’s testimony is not improper bolstering ‘when the expert witness gives no indication about the victim’s veracity[.]’” *Id.* (quoting *State v. Perry*, 420 S.C. 643, 663, 803 S.E.2d 899, 910 (Ct. App. 2017)).

“In an ineffective assistance case, ‘trial counsel’s failure to object to [improper bolstering] testimony does not remove a [] [PCR] applicant’s burden to prove prejudice.’” *Chappell*, 429 S.C. at 80, 837 S.E.2d at 502 (quoting *Thompson*, 423 S.C. at 246, 814 S.E.2d at 492). “The determination of whether a bolstering error is harmless depends on whether the case turns on the credibility of the victim.” *State v. Chavis*, 412 S.C. 101, 110, 771 S.E.2d 336, 341 (2015). “The outcome of a trial turns on the credibility of the victim when the State presents no physical evidence or ‘relie[s] solely upon the victim’s testimony to establish the details of the crime . . . .’” *Chappell*, 429 S.C. at 80, 837 S.E.2d at 502 (quoting *Thompson*, 423 S.C. at 248, 814 S.E.2d at 494).

Applicant has not met his burden of proof concerning this allegation. Counsel credibly testified that they did not think an objection was needed. This Court declines to find the passages highlighted objectionable. However, even if this was improper bolstering, this Court finds that it would not have impacted the outcome at trial. Accordingly, because Applicant has not met either prong of the *Strickland* analysis, relief is denied on this ground.

***Due Process/Failure to Object to Removal of Juror 193***

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Applicant claims there was a Due Process Violation and that Counsel was ineffective because of the removal of Juror 193. Juror 193 was removed because she seemingly saw something about the case in the news, which she brought into deliberations. (Tr. 289). Additionally, she stated that her brother had been murdered and she was interviewed by two investigators affiliated in that case who testified at this trial. (Tr. 292-93). She denied any affiliation with these witnesses during qualifications. (Tr. 292-93). Counsel argued against excluding her from the jury because the connection she had to the officers was tenuous at best. (Tr. 308). The Court elected to exclude her out of questions about the juror's honesty. Specifically, the Court had concerns about the sheer number of excuses she had about failing to disclose these things and the concerns from the rest of the jury that this juror knows more than she was initially letting on. (Tr. 308-09).

Counsel was not deficient because he did argue against her exclusion. Accordingly, there is no prejudice. Finally, Applicant has failed to meet his burden of proving that this constituted a due process violation. Accordingly, relief is denied.

**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 395 (1991), an Applicant has the right to appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRPC provides that if the Applicant wishes to seek appellate review, PCR


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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 22 day of March, 2023.

  
WILLIAM A. MCKINNON  
Presiding Judge  
Seventh Judicial Circuit

Spaulding, South Carolina.

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ALAN WILSON  
ATTORNEY GENERAL

March 31, 2023

The Honorable Amy W. Cox  
Clerk of Court - Spartanburg County  
PO Box 3483  
Spartanburg, SC 29304-3483

Re: Jarvis Stripling, #378264 v. State of South Carolina  
2021-CP-42-04255

Dear Ms. Cox:

Enclosed please find the original Order of Dismissal signed by the Honorable William A. McKinnon, in the above-captioned case, for filing in your office. In addition, please forward proof of service and a time stamped copy back to our office for our file.

Sincerely,

Megan Harrigan Jameson  
Senior Assistant Deputy Attorney General

MHJ/jbh

cc: Susannah Ross, Esquire

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