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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to Marion County
Honorable George M. McFaddin, Jr., Circuit Court Judge
Appellate Case No. 2022-001735

TYRELL WOODS,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

STATEMENT OF ISSUES ON CERTIORARI.....1

COUNTER-STATEMENT OF ISSUES ON CERTIORARI1

STATEMENT OF THE CASE.....2

STANDARD OF REVIEW3

ARGUMENT4

I. The PCR judge correctly determined Woods failed to meet his burden of establishing appellate counsel was constitutionally ineffective for failing to challenge the trial judge’s denial of a suppression motion on appeal and failing to file a merits brief challenging a portion of the indictment because Woods neither demonstrated appellate counsel’s performance regarding those two matters was objectively unreasonable under the circumstances involved nor showed there was a reasonable likelihood the result of the appellate proceedings would have been different but for appellate counsel’s performance concerning those two matters.4

II. The PCR judge correctly determined Woods failed to meet his burden of establishing trial counsel was constitutionally ineffective for failing to raise an objection to the fingerprint evidence based on an alleged issue with the quality of the standards used for comparison purposes because Woods neither demonstrated trial counsel’s performance concerning the fingerprint evidence was objectively unreasonable under the circumstances involved nor showed there was a reasonable likelihood the result of the trial proceedings would have been different but for trial counsel’s performance concerning that particular evidence.15

CONCLUSION.....24

STATEMENT OF ISSUE ON CERTIORARI

I.

“Appellate counsel was ineffective for failing to appeal the trial court’s denial of Petitioner’s motion to exclude Detective James Lee’s testimony identifying Applicant from surveillance footage.”

II.

“Appellate counsel was ineffective for failing to file a merits brief on appeal addressed to the trial court’s denial of Petitioner’s motion to dismiss the criminal conspiracy indictment.”

III.

“Trial counsel was ineffective for failing to object to the fingerprint evidence based on the quality of the standards used for identification.”

COUNTER-STATEMENT OF ISSUE ON CERTIORARI

I.

Did the PCR judge err by determining Woods failed to meet his burden of establishing appellate counsel was constitutionally ineffective for failing to challenge the trial judge’s denial of a suppression motion on appeal and failing to file a merits brief challenging a portion of the indictment when Woods neither demonstrated appellate counsel’s performance regarding those two matters was objectively unreasonable under the circumstances involved nor showed there was a reasonable likelihood the result of the appellate proceedings would have been different but for appellate counsel’s performance concerning those two matters?

II.

Did the PCR judge err by determining Woods failed to meet his burden of establishing trial counsel was constitutionally ineffective for failing to raise an objection to the fingerprint evidence based on an alleged issue with the quality of the standards used for comparison purposes when Woods neither demonstrated trial counsel’s performance concerning the fingerprint evidence was objectively unreasonable under the circumstances involved nor showed there was a reasonable likelihood the result of the trial proceedings would have been different but for trial counsel’s performance concerning that particular evidence?

STATEMENT OF THE CASE

In July of 2012, Petitioner Tyrell Woods was arrested following an investigation into the brutal execution-style killing of seventy-year-old Samuel Rowell (“Victim”) during the course of a home invasion.¹ In May of 2013, the Marion County Grand Jury indicted Woods—along with his uncle, Marco Siara Sanders—for murder, armed robbery, first-degree burglary, attempted murder, possession of a firearm during the commission of a violent crime, and conspiracy.² On May 19, 2014, a joint jury trial was commenced in the Marion County Court of General Sessions with the Honorable D. Craig Brown, circuit court judge, presiding. At the conclusion of the four-day trial, the jury convicted Woods and Sanders as indicted. Following the verdict, the trial judge sentenced both Woods and Sanders to consecutive terms of imprisonment of life without parole for murder, life without parole for first-degree burglary, thirty years for armed robbery, thirty years for attempted murder, five years for conspiracy, and five years for possession of a firearm during the commission of a violent crime. Woods then timely initiated an appeal.

On appeal, Woods’s appellate counsel submitted a brief pursuant to Anders v. California, 386 U.S. 738 (1967), along with a petition to be relieved as counsel, and Woods submitted a pro se brief in support of his appeal. After reviewing the matter, the Court of Appeals issued an unpublished decision dismissing the appeal and granting appellate counsel’s petition to be relieved. State v. Woods, Op. No. 2016-UP-030 (S.C. Ct. App. filed January 20, 2016). Thereafter, on March 10, 2016, remittitur was issued.

¹ The order of dismissal issued in Woods’s case contains a thorough summary of the facts surrounding the killing along with the ensuing investigation of it that culminated in Woods’s arrest and conviction. (App’x pp. 1086-1096).

² Later on, Sanders was fatally stabbed in a prison fight and is now deceased. (App’x p. 1086).

Subsequent to the issuance of the remittitur, Woods timely filed an application for post-conviction relief (“PCR”), and, in response, the State filed a return and partial motion to dismiss requesting an evidentiary hearing. Woods—through counsel—then filed several amendments to his PCR application raising additional grounds for relief. On April 21, 2022, an evidentiary hearing was commenced in the Florence County Court of Common Pleas with the Honorable George M. McFaddin, Jr., circuit court judge, presiding. At the conclusion of the two-day hearing, the PCR judge took the matter under advisement. Thereafter, through an order filed on November 10, 2022, the PCR judge denied and dismissed Woods’s PCR application. Woods then timely filed a notice of appeal.

STANDARD OF REVIEW

In PCR cases, the standard of review to be applied on appeal is directly dependent on the specific issues raised. Smalls v. State, 422 S.C. 174, 180, 810 S.E.2d 836, 839 (2018). When reviewing a PCR judge’s factual findings on appeal, the appellate court will defer to those findings and uphold them if they are supported by any evidence of probative value appearing in the record. Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); see Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018) (“Under the proper standard of review, the appellate court’s ‘view’ must be limited to whether there is probative evidence to support the PCR court’s factual findings.”). Meanwhile, when reviewing a pure question of law, an appellate court will consider such a matter de novo and is not required to give deference to the PCR judge’s rulings. Jamison v. State, 410 S.C. 456, 465, 765 S.E.2d 123, 127 (2014). Ultimately, if the PCR judge’s decision is controlled by an error of law, an appellate court will reverse that decision on appeal. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

ARGUMENT

I.

The PCR judge correctly determined Woods failed to meet his burden of establishing appellate counsel was constitutionally ineffective for failing to challenge the trial judge's denial of a suppression motion on appeal and failing to file a merits brief challenging a portion of the indictment because Woods neither demonstrated appellate counsel's performance regarding those two matters was objectively unreasonable under the circumstances involved nor showed there was a reasonable likelihood the result of the appellate proceedings would have been different but for appellate counsel's performance concerning those two matters.

Woods contends the PCR judge reversibly erred by failing to find he received constitutionally ineffective assistance of appellate counsel. As support for that contention, Woods maintains the PCR judge should have determined appellate counsel was constitutionally ineffective for: (1) failing to raise an issue on appeal challenging the trial judge's denial of trial counsel's motion seeking the exclusion of a detective's identification testimony; and (2) failing to file a merits brief instead of an Anders brief challenging the trial judge's denial of trial counsel's motion seeking the dismissal of the portion of the six-count indictment charging Woods with conspiracy. To the contrary, Woods—just as the PCR judge correctly concluded—failed to meet his burden of establishing both appellate counsel's performance concerning those two matters was deficient and there was a reasonable likelihood the result of the appellate proceedings would have been different but for appellate counsel's performance on those two matters. Under such circumstances, the PCR judge properly determined Woods was not entitled to relief since he did not and could not meet his burden of establishing deficiency and prejudice as required. Woods's petition for a writ of certiorari should be denied.

Law Applicable to Ineffective Assistance of Appellate Counsel Claims

In South Carolina, a criminal defendant has a right to effective assistance of appellate counsel on appeal. Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990); see McMann

v. Richardson, 397 U.S. 759, 771 (1970) (“[T]he right to counsel is the right to the effective assistance of counsel.”). Importantly though, appellate counsel is not required to raise every nonfrivolous issue present in the record in order to provide effective assistance on appeal. Tisdale v. State, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004); see Evitts v. Lucey, 469 U.S. 387, 394 (1985) (“[T]he attorney need not advance *every* argument, regardless of merit, urged by the appellant[.]”). In fact, appellate counsel may provide the most effective assistance by focusing on a single strong issue instead of raising every conceivable issue that could possibly be raised. Jones v. Barnes, 463 U.S. 745, 751-752 (1983).

In order to prevail on a claim of ineffective assistance of appellate counsel, a PCR applicant has the burden of overcoming the strong presumption appellate counsel provided adequate representation and, to do so, must establish both deficiency and prejudice. Gilchrist v. State, 364 S.C. 173, 178, 612 S.E.2d 702, 705 (2005). To establish deficiency, the applicant must demonstrate appellate counsel’s performance objectively amounted to incompetence under prevailing professional norms and did not simply deviate “from best practices or most common custom.” Harrington v. Richter, 562 U.S. 86, 105 (2011). Meanwhile, to establish prejudice, “the applicant must show that, but for [appellate] counsel’s errors, there is a reasonable probability he would have prevailed on appeal.” Anderson v. State, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003). Significantly, meeting the requisite burden of establishing both deficiency and prejudice is generally “difficult” for an applicant raising an ineffective assistance of appellate counsel claim. Smith v. Robbins, 528 U.S. 259, 288 (2000).

Application of the Relevant Law to Woods’s Case

- A. The PCR judge correctly concluded Woods failed to meet his burden of establishing appellate counsel was constitutionally ineffective for failing to raise an appellate challenge to the trial judge’s ruling admitting identification testimony because the trial judge’s decision to admit the testimony was proper pursuant to South Carolina law and, as a result, neither deficiency nor prejudice could be established.**

Relevant Facts

Shortly before Victim was callously executed inside his own home, his killers were recorded on surveillance footage entering the residence with guns drawn. (App’x p. 275; p. 277; p. 285; pp. 615-616; State’s Ex. # 1 (Surveillance Footage Recording)). Thereafter, during the ensuing investigation into the matter, detectives from the Marion County Sheriff’s Office were—despite the killers’ efforts to disable the surveillance equipment—able to recover the footage and view it. (App’x p. 329; pp. 485-486; pp. 495-496; pp. 545-551; p. 555). Upon doing so, Detective James Lee, who had prior knowledge of Woods and Sanders, identified both men while another detective—Detective Neil Rouse—was able to identify Sanders. (App’x pp. 77-79; pp. 81-83; pp. 87-88; pp. 511-513).

Towards the outset of Woods’s and Sanders’s subsequent trial in connection to the brutal slaying, both Woods’s and Sanders’s trial counsels challenged the admissibility of the evidence of the detectives’ identifications from the recovered surveillance footage, and the trial judge conducted a hearing on the matter. (App’x pp. 75-118). During that hearing, Detective Rouse and Detective Lee discussed their identifications while recounting their knowledge of Sanders and Woods. (App’x pp. 76-107). More specifically, Detective Rouse explained he had known Sanders for fifteen years, knew Woods for four years, and recognized Sanders from the footage. (App’x pp. 77-79; pp. 81-83; pp. 87-88). Likewise, Detective Lee explained he had known Woods since around 2007, also knew Sanders, had a face-to-face encounter with both on one occasion, and was familiar with Woods through that encounter along with through seeing his photograph in connection to other cases. (App’x pp. 94-96; pp. 98-100; pp. 104-105; p. 107). Following the presentation of that testimony, both trial counsels challenged the identifications based on the purported insufficiency of the investigators’ familiarity with the two while the

solicitor argued both Detective Lee and Detective Rouse had sufficient past knowledge to make the identifications. (App’x pp. 109-115). Upon considering the matter, the trial judge—relying upon the appellate decisions in State v. Fripp, 396 S.C. 434, 721 S.E.2d 465 (Ct. App. 2012), and State v. Mitchell, 399 S.C. 410, 731 S.E.2d 889 (Ct. App. 2012)—ruled the testimony was admissible due to the fact the investigators’ prior knowledge of the defendants could aid the jury and noted any issues with the sufficiency of the investigators’ knowledge were matters of weight that could be argued to the jury. (App’x pp. 116-118).

Thereafter, as the trial proceeded forward, testimony and evidence—including compelling fingerprint evidence—linking Sanders and Woods to Victim’s killing was introduced. (App’x pp. 198-661). Amongst the testimony presented, Detective Lee—over objection—testified about the identifications he made from the surveillance footage. (App’x pp. 503-504; pp. 513-514). Following the presentation of all the testimony and evidence, Woods and Sanders were convicted as indicted. (App’x pp. 754-756).

Subsequently, Woods appealed, his appellate counsel filed an Anders brief along with a petition to be relieved, and Woods submitted his own pro se brief, too. (App’x pp. 841-855; pp. 859-869). In their briefs, neither raised any issues related to the trial judge’s ruling admitting Detective Lee’s identification testimony. (App’x pp. 841-855; pp. 859-869). After conducting the Anders review process, the Court of Appeals dismissed Woods’s appeal and relieved appellate counsel. (App’x pp. 872-873).

Later on during the post-conviction relief evidentiary hearing, Woods’s highly-experienced appellate counsel testified about his representation of Woods on appeal. (App’x p. 1060; pp. 1071-1075). In doing so, he explained he reviewed the record and made a case-specific judgment call to submit an Anders brief after seeing no issues—including one related to

Detective Lee’s identification testimony—he believed would have been likely to be successful on appeal under the circumstances involved. (App’x pp. 1062-1066; pp. 1078-1079).

Ultimately, upon considering the matter, the PCR judge rejected Woods’s claim appellate counsel was constitutionally ineffective for failing to appeal the trial judge’s ruling denying the motion to exclude Detective Lee’s identification testimony. (App’x pp. 1131-1133). In so ruling, the PCR judge concluded appellate counsel’s reasoned choice not to raise that particular issue on appeal did not constitute deficient performance and no prejudice to Woods resulted from that decision because the issue had no reasonable likelihood of being a viable one in light of the applicable standard of review for such issues, the evidentiary support that existed for the trial judge’s ruling, and presence of the other overwhelming evidence of Woods’s guilt, which included “profoundly-incriminating fingerprint evidence.” (App’x pp. 1131-1133). As a result, the PCR judge found Woods had failed to meet his burden of proving the necessary deficiency and prejudice to warrant relief on the claim. (App’x p. 133).

Analysis

In South Carolina, a lay witness is permitted to offer opinion testimony—including opinion testimony concerning the identity of individuals depicted in surveillance footage—when the opinion or inference: (1) is rationally based on the witness’s perception; (2) is helpful to a clear understanding of the witness’s testimony or to the determination of a fact in issue; and (3) does not require special knowledge, skill, experience, or training. Rule 701, SCRE; see State v. Fripp, 396 S.C. 434, 441, 721 S.E.2d 465, 468 (Ct. App. 2012) (“[T]he identification of a familiar person does not require any specialized knowledge, skill, experience, or training[.]”). Meanwhile, a trial judge is afforded substantial discretion concerning whether to admit such testimony during trial, and, on appeal, the trial judge’s ruling on the matter will not be reversed

absent “a manifest abuse of discretion accompanied by probable prejudice.” Fripp, 396 S.C. at 438, 721 S.E.2d at 467 (citation and internal quotations omitted).

In his petition for a writ of certiorari, Woods contends the PCR judge erred by refusing to grant relief based on appellate counsel’s failure to challenge the trial judge’s ruling admitting Detective Lee’s identification testimony. In so contending, Woods—without identifying a single appellate decision from South Carolina or anywhere else in which similar testimony was found to be inadmissible—maintains Detective Lee’s testimony was improperly admitted because he supposedly did not have *sufficient* past contact with Woods upon which to base his identification. Based on that, Woods alleges appellate counsel was constitutionally ineffective for not raising the supposedly-meritorious issue on appeal.

Contrary to Woods’s contention and just as the PCR judge wisely recognized, appellate counsel’s reasoned choice not to raise that particular issue on appeal did not constitute deficient performance because the issue was not a viable one or one that no reasonably competent attorney would have failed to raise based on: (1) the deferential standard of review that would govern appellate review of the issue; (2) the evidentiary support that existed for the ruling in light of Detective Lee’s testimony establishing he did have a basis of knowledge for the identification; and (3) the existence of other independent and overwhelming evidence of Woods’s guilt. See State v. Mitchell, 399 S.C. 410, 419-420, 731 S.E.2d 889, 895-896 (Ct. App. 2012) 895-896 (affirming a ruling admitting an officer’s testimony identifying the defendant from photographs despite the fact the officer only indicated he was familiar with the defendant through living in the same community); see also State v. McClinton, 265 S.C. 171, 176-177, 217 S.E.2d 584, 586 (1975) (“[C]onclusions or opinions of laymen should be rejected only when they are superfluous in the sense that they will be of *no* value to the jury.” (emphasis added)); cf. Winkler v. State,

418 S.C. 643, 653, 795 S.E.2d 686, 692 (2016) (“One of the key circumstances a court must consider in its examination of counsel’s decision not to make a particular objection is whether there was any law to support the objection.”). Meanwhile, for exactly the same reasons, Woods was not prejudiced by appellate counsel’s failure to raise the issue because—even if raised—it would not have resulted in a different outcome on appeal under the circumstances involved. Cf. Hill v. State, 415 S.C. 421, 433, 782 S.E.2d 414, 420 (Ct. App. 2016) (affirming the denial of Hill’s claim appellate counsel was ineffective for failing to raise a directed verdict issue on appeal because Hill would not have been entitled to reversal on appeal had the issue been raised and, thus, Hill could not meet his burden of establishing “a reasonable probability of a different outcome” existed). Resultantly, the PCR judge correctly found Woods’s failed to meet his burden of establishing appellate counsel was constitutionally ineffective. See Thrift, 302 S.C. at 539-540, 397 S.E.2d at 526 (“The testimony of petitioner’s appellate attorney that she reviewed the requested charge and the charge as given and consciously decided not to brief the issue, clearly supports the PCR judge’s finding that appellate counsel was not ineffective.”); see also Robbins, 528 U.S. at 288 (recognizing “it is difficult to demonstrate that counsel was incompetent” for failing to raise a particular claim on appeal). Woods’s petition for a writ of certiorari should be denied.

B. The PCR judge correctly concluded Woods failed to meet his burden of proving appellate counsel was constitutionally ineffective for failing to challenge the trial judge’s refusal to dismiss the conspiracy charge through the filing of a merits brief because the trial judge’s ruling was a correct one based on existing South Carolina precedent and, as a result, neither deficiency nor prejudice could possibly be established under the circumstances involved.

Relevant Facts

Five warrants were issued for Woods’s arrest in connection to Victim’s killing, and those arrest warrants alleged Woods had committed the offenses of murder, first-degree burglary,

armed robbery, possession of a firearm during the commission of a violent crime, and attempted murder. (App’x p. 835; p. 1039). Following that, a single multi-count indictment was issued by the Marion County Grand Jury in Woods’s case, and, through that indictment, Woods—along with Sanders—was indicted for six offenses, including conspiracy. (App’x pp. 835-836).

At the beginning of Woods’s subsequent trial, the trial judge—with Woods present—read aloud each count of the lone indictment, including the count charging Woods with conspiracy. (App’x pp. 17-19). After that and before the jury was sworn, Woods’s trial counsel—along with Sanders’s—sought for the conspiracy charge to be ruled invalid because the process for serving a direct indictment purportedly was not followed as to that particular charge. (App’x p. 139; p. 172). Ultimately though, the trial judge declined to dismiss the conspiracy charge, and Woods was convicted as indicted on all counts, including the one for conspiracy. (App’x p. 171; pp. 671-672; p. 756).

Following his conviction, Woods appealed, and his appellate counsel filed an Anders brief on his behalf along with a petition to be relieved. (App’x pp. 841-855). Through that brief, appellate counsel addressed and analyzed the following issue: “Whether the trial court erred in refusing to dismiss [Woods]’s conspiracy charge because he was never served with a warrant or the indictment for this charge?” (App’x pp. 841-855). Furthermore, in his brief, appellate counsel—demonstrating his research into the matter and awareness of pertinent adverse authority—acknowledged the existence of the decision in Magazine v. State, 361 S.C. 610, 606 S.E.2d 761 (2004). (App’x p. 853). Thereafter, Woods submitted a pro se brief on his own behalf and, through it, also raised an issue related to the trial judge’s failure to dismiss the conspiracy charge. (App’x pp. 859-869). Upon considering those briefs and conducting the

requisite review pursuant to Anders, the Court of Appeals dismissed Woods's appeal and granted appellate counsel's petition to be relieved. (App'x pp. 872-873).

Later on during the post-conviction relief evidentiary hearing, Woods testified about the conspiracy charge and asserted he was never served with an arrest warrant or indictment for that offense. (App'x pp. 1025-1026). However, Woods further admitted he did receive a copy of the indictment and acknowledged he heard the trial judge read all the charges, including the one for conspiracy, at the outset of trial. (App'x pp. 1026-1027; pp. 1039-1042; p. 1056). In addition to that testimony, appellate counsel also offered testimony concerning the issue related to the conspiracy charge, explained he raised that precise issue through his Anders brief after reviewing the record in Woods's case, and indicated he did not believe the issue was a viable one based on his research, which led to his reasoned decision to file an Anders brief as opposed to a merits brief. (App'x p. 1061; pp. 1067-1071; pp. 1077-1078).

Ultimately, upon considering the matter, the PCR judge rejected Woods's claim appellate counsel was constitutionally ineffective for failing to file a merits brief to challenge the trial judge's ruling as to the conspiracy charge. (App'x pp. 1133-1138). In rejecting that claim, the PCR judge—while citing to the decisions issued in Magazine and State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005)—concluded appellate counsel's reasoned choice not to raise that issue through a merits brief did not constitute deficient performance because the issue was not a viable one in light of the fact Woods was on notice of the conspiracy charge based on what occurred in his case. (App'x pp. 1135-1136). Likewise, the PCR judge concluded Woods was not prejudiced by appellate counsel's performance because there was no reasonable likelihood of a successful outcome on appeal in light of South Carolina's existing precedent, which was strongly supported by the fact the Court of Appeals dismissed the appeal despite the conspiracy issue

being raised in the briefs submitted by both appellate counsel and Woods himself. (App’x p. 1136). Under such circumstances, the PCR judge found Woods had failed to meet his burden of proving the requisite deficiency and prejudice in regard to the claim. (App’x p. 1137).

Analysis

In South Carolina, an indictment is a *notice* document, and its “primary purpose” is “to put the defendant on notice of what he is called upon to answer, *i.e.*, to [apprise] him of the elements of the offense and to allow him to decide whether to ple[a]d guilty or stand trial.” State v. Smalls, 364 S.C. 343, 346-347, 613 S.E.2d 754, 756 (2005) (citation and internal quotations omitted). Notably, in Magazine v. State, 361 S.C. 610, 615-616, 606 S.E.2d 761, 764 (2004), a PCR applicant challenged the notice he received on his criminal charges, and the PCR judge granted relief after finding personal service of a warrant or indictment was necessary for a defendant to have proper notice in our state. Following that ruling, the State appealed. Id. at 615, 606 S.E.2d at 764. On appeal, this Court reversed. Id. at 620, 606 S.E.2d at 766. In doing so, this Court reasoned Magazine did, in fact, receive adequate notice of his charges by virtue of the trial judge’s act of reading them aloud at the beginning of trial. Id. at 616, 606 S.E.2d at 764.

In his petition for a writ of certiorari, Woods contends the PCR judge erred by refusing to find appellate counsel was ineffective for failing to challenge the trial judge’s refusal to dismiss the conspiracy charge through a merits brief. As support for that contention, Woods dismisses the Magazine decision as a “single, decade old case” and asserts the result of Woods’s appeal would have been different if appellate counsel had challenged the trial judge’s ruling on the conspiracy charge. Meanwhile, in so contending, Woods fails to cite even a single appellate decision from South Carolina or anywhere else in which a criminal defendant’s right to notice was found to be violated under circumstances like the ones that occurred in his case.

Contrary to Woods’s appellate contention, appellate counsel’s reasoned choice not to raise the conspiracy charge issue through a merits brief did not constitute deficient performance because that issue was simply not a viable one pursuant to established South Carolina precedent. See Anders v. California, 386 U.S. 738, 744 (1967) (“Of course, if counsel finds his case to be wholly frivolous, after a conscientious examination of it, he *should* so advise the court and request permission to withdraw.” (emphasis added)); cf. Mayo v. State, 347 S.C. 422, 426, 556 S.E.2d 380, 382 (2001) (holding a PCR judge’s grant of relief based on defense counsel’s failure to raise an objection to be without factual support where “there was no sustainable objection” defense counsel could have made). Demonstrating the non-viability of Woods’s complaints related to the conspiracy charge, Woods—like the defendant in Magazine—was unquestionably on notice of that charge through the lone multi-count indictment that was issued in his case and through the trial judge’s act of reading each and every one of the counts in the indictment—including the count charging Woods with conspiracy—in Woods’s presence at the beginning of trial. Magazine, 361 S.C. at 616, 606 S.E.2d at 764; see State v. Gentry, 363 S.C. 93, 102, 610 S.E.2d 494, 500 (2005) (“The indictment is a notice document.”). Relatedly, Woods likewise could not have been prejudiced by appellate counsel’s decision not to raise the issue through a merits brief because such an issue—even if raised through a merits brief—was not reasonably likely to have had any success on appeal in light of our state’s existing case law, which is strongly supported by the fact the Court of Appeals dismissed Woods’s appeal after review even though the conspiracy charge issue was raised in both appellate counsel’s and Woods’s submitted briefs. See Anderson, 354 S.C. at 434, 581 S.E.2d at 835 (“To prove prejudice, the applicant must show that, but for counsel’s errors, there is a reasonable probability he would have prevailed on appeal.”). For those reasons, the PCR judge properly rejected Woods’s claim,

and his decision to do so was neither unsupported by the record nor legally erroneous. See Strickland v. Washington, 466 U.S. 668, 700 (1984) (explaining an ineffective assistance of counsel claim lacks merits unless the applicant makes the requisite showing of both deficiency and prejudice). Woods’s petition for a writ of certiorari should be denied.

II.

The PCR judge correctly determined Woods failed to meet his burden of establishing trial counsel was constitutionally ineffective for failing to raise an objection to the fingerprint evidence based on an alleged issue with the quality of the standards used for comparison purposes because Woods neither demonstrated trial counsel’s performance concerning the fingerprint evidence was objectively unreasonable under the circumstances involved nor showed there was a reasonable likelihood the result of the trial proceedings would have been different but for trial counsel’s performance concerning that particular evidence.

Woods contends the PCR judge reversibly erred by failing to find he received constitutionally ineffective assistance of trial counsel. As support for that contention, Woods maintains the PCR judge should have determined trial counsel was constitutionally ineffective for failing to object to the fingerprint evidence discussed during trial based on a purported issue with the quality of the standards used for comparison purposes. To the contrary, Woods—just as the PCR judge correctly concluded—failed to meet his burden of establishing both trial counsel’s performance concerning the fingerprint evidence was deficient and there was a reasonable likelihood the result of the trial would have been different but for trial counsel’s performance concerning that particular evidence. Under such circumstances, the PCR judge properly determined Woods was not entitled to relief since he did not meet his burden of establishing deficiency and prejudice as required. Woods’s petition for a writ of certiorari should be denied.

Law Applicable to Ineffective Assistance of Trial Counsel Claims

In every criminal case tried in South Carolina, the defendant has a constitutional right to a fair trial. State v. Woods, 345 S.C. 583, 587, 550 S.E.2d 282, 284 (2001). Pursuant to that right, the defendant is entitled to effective assistance of trial counsel. Richardson, 397 U.S. at 771 n. 14. However, that does not mean entitlement to perfect or mistake-free representation. Burt v. Titlow, 571 U.S. 12, 24 (2013). Instead, it simply means assistance that was objectively reasonable under prevailing professional norms. Strickland, 466 U.S. at 687-688. Meanwhile, trial counsel's assistance is considered constitutionally ineffective only when it "so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Id. at 686.

When faced with a claim of ineffective assistance of trial counsel, a reviewing court must conduct a two-pronged analysis. Franklin v. Catoe, 346 S.C. 563, 570, 552 S.E.2d 718, 722 (2001). Pursuant to that two-pronged analysis, an applicant must establish: (1) trial counsel's representation fell below an objective standard of reasonableness; and (2) there is a reasonable probability the outcome of the proceeding would have been different but for trial counsel's deficient performance. Williams v. State, 363 S.C. 341, 343, 611 S.E.2d 232, 233 (2005). Thus, the applicant has the heavy burden of establishing both deficiency and prejudice in order to be entitled to relief. Hughes v. State, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001).

Regarding the deficiency prong of the analysis, the proper measure of performance is whether trial counsel provided representation within the objectively reasonable range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); see Richter, 562 U.S. at 110 (instructing the proper analysis "calls for an inquiry into the objective reasonableness of counsel's performance, not counsel's subjective state of mind"). To

establish deficiency, the applicant must demonstrate trial counsel “made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” Strickland, 466 U.S. at 687. Thus, trial counsel’s performance will be considered deficient only when it objectively amounted to incompetence under prevailing professional norms and not when it simply “deviated from best practices or most common custom.” Richter, 562 U.S. at 105.

Beyond satisfying the burden required by the deficiency prong, an applicant also bears the burden of establishing prejudice in order to be entitled to relief as “[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” Strickland, 466 U.S. at 691. For that burden to be met, trial counsel’s deficient performance must have prejudiced the applicant to such an extent there is a reasonable probability the result of the trial would have been different but for trial counsel’s unprofessional errors. Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989). Moreover, “[t]he likelihood of a different result must be substantial, not just conceivable.” Richter, 562 U.S. at 112; see Strickland, 466 U.S. at 694 (“A reasonable probability is a probability sufficient to undermine confidence in the outcome.”).

Application of the Relevant Law to Woods’s Case

The PCR judge correctly concluded Woods failed to meet his burden of proving trial counsel was constitutionally ineffective for failing to raise an objection to the fingerprint evidence based on an alleged issue with the quality of the standards used for comparison purposes because Woods did not present anything substantive to actually support his claim and, as a result, did not sufficiently establish either deficiency or prejudice as required to obtain relief.

Relevant Facts

After Sanders and Woods were apprehended in connection to Victim’s brutal execution-style killing, known fingerprint standards collected from Woods, Sanders, and Victim were

submitted for analysis along with the evidence that had been collected from the crime scene. (App'x p. 312; pp. 520-523; pp. 534-535; pp. 538-540; p. 543; pp. 627-628; p. 630). Upon analyzing the evidence collected from the crime scene, Thomas Darnell, a latent print examiner and expert in latent print identification from SLED, was able to recover a number of identifiable prints. (App'x pp. 631-632). He then compared those recovered prints to the known standards that had been submitted and was able to make multiple identifications. (App'x pp. 648-649). Specifically, he identified four fingerprints attributable to Sanders and sixteen attributable to Woods. (App'x pp. 634-639). The four identified prints from Sanders were found on two different cigar boxes located at the crime scene. (App'x p. 635). Meanwhile, two of Woods's prints were found on two different boxes of cigars, four of his prints were found on a box of liquor, one was found on a cardboard box recovered from Victim's kitchen, two were found on the *adhesive side* of the duct tape that had been collected *from around Victim's head*, three were found on the non-adhesive side of the duct tape *used to bind Victim's ankles*, and four were found on the *adhesive side* of that same duct tape. (App'x pp. 634-639).

Later on during Woods's trial, Darnell, who had eighteen to twenty years of experience conducting latent fingerprint examinations by that point, offered expert testimony about his analysis of all the submitted fingerprint evidence and his conclusion twenty of the prints recovered at the crime scene were attributable to Sanders and Woods. (App'x p. 623; pp. 628-661). In discussing his analysis, Darnell explained he was able to reach his conclusion by comparing identifiable prints—which meant prints with sufficient clarity or detail for comparison purposes—from the crime scene to known fingerprints collected from Victim, Sanders, and Woods. (App'x pp. 627-629; pp. 631-632). Darnell further indicated he had no doubt in the accuracy of the identifications he made, he noted his work was reviewed by another

latent print examiner, and he used demonstrative evidence to “illustrate [his] testimony” and show some of the matches to the jury. (App’x pp. 640-648; p. 659; p. 661). Notably, during Darnell’s testimony, no forensic reports were introduced or admitted into evidence. (App’x pp. 13-15; pp. 621-661). However, Sanders’s trial counsel cross-examined Darnell about his reports and elicited testimony establishing many of the examined items identified within them were listed as having no value for identification purposes. (App’x pp. 651-653).

Subsequently, during the PCR evidentiary hearing, Woods’s PCR counsel introduced a SLED forensic report that appeared to be connected to Darnell’s initial fingerprint analysis in Woods’s case, and that report was dated November 5, 2012. (App’x pp. 1139-1152). Additionally, PCR counsel introduced a supplemental SLED forensic report that appeared to be connected to further fingerprint analysis conducted by Darnell in Woods’s case, and that second report was dated November 19, 2012. (App’x pp. 1161-1162).

In the first of those reports, numerous items were referenced, and the listed results of the analysis of fifteen of those items were “IDENTIFIED with Item 64 / Woods, Tyrell.”³ (App’x pp. 1139-1152). Meanwhile, one of the referenced items—Item 3.1, which was identified in the report as a latent print developed from a cigar box—had results stating “NO CONCLUSION will be rendered due to the quality of Item 64 / Woods, Tyrell.” (App’x p. 1139). Similarly, for the same item, the first report *also* had results stating “NO CONCLUSION will be rendered due to the quality of Item 60 / Rowell, Samuel” and “NO CONCLUSION will be rendered due to the quality of Item 63 / Sanders, Marco Sirra.” (App’x p. 1139).

³ In the same report, Item 64 was identified as “[m]ajor case prints bearing the name Woods, Tyrell received from SLED AFIS.” (App’x p. 1151). In addition to that, Item 60 was identified in the report as “[o]ne (1) set of post mortem major case prints from Rowell, Samuel.” (App’x p. 1151). Meanwhile, Item 63 was identified as “[f]ingerprint card bearing the name Sanders, Marco Sirra received from SLED AFIS.” (App’x p. 1151).

The supplemental second report was much shorter. (App’x pp. 1161-1162). It contained the results of an analysis of the same Item 3.1 referenced in the first report. (App’x p. 1161). As to those results, it stated “IDENTIFIED with Item 106 / Woods, Tyrell.”⁴ (App’x p. 1161).

In addition to the introduction of the two forensic reports, Woods’s trial counsel was questioned during the evidentiary hearing about the information contained in those reports. (App’x pp. 922-929). Through that questioning coupled with trial counsel’s responses to it, PCR counsel expressed a view the contents of the report meant the first of Woods’s fingerprint standards was not of sufficient quality for comparison purposes while trial counsel indicated he had a different view and believed the contents of the report may have meant Item 3.1 was what was of insufficient quality for an identification to be made. (App’x pp. 922-929). In any event, trial counsel agreed he did not move to suppress the report on the basis it indicated Woods’s fingerprint standard was insufficient for comparison purposes. (App’x p. 926). Beyond that, no further testimony was presented about the report or what its contents truly meant, including from its author—Darnell. (App’x pp. 906-1009; 1011-1082).

Ultimately, upon considering the matter, the PCR judge rejected Woods’s claim trial counsel was constitutionally ineffective for failing to raise an objection based on the quality of the fingerprint evidence. (App’x pp. 1117-1121; pp. 1137-1138). In doing so, the PCR judge noted Woods did *not* present any testimony from Darnell or anyone else with knowledge of what was meant by the information contained in the forensic reports introduced during the evidentiary hearing and, instead, merely offered his own speculative and self-serving opinion as to what he personally believed the contents of the reports might have meant. (App’x pp. 1119-1120). The

⁴ Item 106 was identified in the supplemental report as “[m]ajor case prints bearing the name Woods, Tyrell received from S/A Scott Hardee.” (App’x pp. 1161-1162). During Woods’s trial, Agent Scott Hardee from SLED presented testimony identifying himself as the individual who collected Woods’s fingerprints in November of 2012. (App’x p. 515; pp. 520-523).

PCR judge further noted there was nothing contained in the forensic reports that—standing alone—would have supported a conclusion Darnell’s expert testimony concerning the fingerprint matches was inadmissible. (App’x pp. 1120-1121). Under such circumstances, the PCR judge concluded Woods’s unsupported speculation was insufficient to satisfy his burden of proving the requisite deficiency and prejudice. (App’x pp. 1119-1121).

Analysis

In PCR proceedings, the applicant bears the burden of proving the allegations raised. Speaks v. State, 377 S.C. 396, 399, 660 S.E.2d 512, 514 (2008); Rule 71.1(e), SCRPC. And, to satisfy that burden, the applicant cannot merely rely on pure speculation or conjecture about what might conceivably have occurred at trial if trial counsel had done something differently and, instead, must produce substantive evidence that actually supports what is alleged. Cf. Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (“[B]ecause Dempsey failed to have an expert on child sexual abuse testify at the PCR hearing, we hold that any finding of prejudice is merely speculative.”), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018); Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (“This Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness’ failure to testify at trial.”); Glover v. State, 318 S.C. 496, 498-499, 458 S.E.2d 538, 540 (1995) (“The applicant’s mere speculation what the witnesses’ testimony would have been cannot, by itself, satisfy the applicant’s burden of showing prejudice.” (footnote omitted)); Underwood v. State, 309 S.C. 560, 562, 425 S.E.2d 20, 22 (1992) (rejecting Underwood’s claim trial counsel was ineffective for failing to call witnesses to establish an alibi defense because none of the witnesses testified during the PCR hearing).

Through his petition for a writ of certiorari, Woods contends the PCR judge erred by refusing to grant relief based on trial counsel's failure to object to the fingerprint evidence. In raising such a contention, Woods points to a portion of the forensic report that contained an indication a comparison could not be made to a single specific latent print—Item 3.1—collected from the crime scene due to quality issues and then speculates the quality issues that impacted that particular comparison *must have* impacted all the others comparisons that were made and, thus, the fingerprint evidence as a whole was somehow rendered inadmissible. Meanwhile, Woods fails to explain how his speculative interpretation of the contents of the forensic report could be accurate in light of the fact both reports *also* indicated Darnell was able to make numerous matches from the standards he used, Darnell testified during trial he was able to match numerous latent prints collected at the crime scene to Woods's fingerprints, and Darnell even visually demonstrated some of those matches to the jury through the use of demonstrative evidence. Beyond that, Woods fails to identify even a single case from South Carolina or anywhere else in which fingerprint evidence was excluded for the speculative reason he contends the fingerprint evidence should have been suppressed during his trial.

Contrary to Woods's current contention, Woods wholly failed to meet his burden of establishing either deficiency or prejudice in regard to trial counsel's performance concerning the fingerprint evidence because he presented nothing outside of his own speculative opinion that actually proved his PCR claim. Critically, because Woods did not offer any substantive testimony during the evidentiary hearing from Darnell or anyone else with actual knowledge of the reports to demonstrate what their contents truly meant, the PCR judge was left to speculate as to what the first report—which, in addition to the lone portion Woods pointed to and continues to point to as significant to his claim, contains information indicating fifteen *other* fingerprints

recovered from the crime scene were matched to “Item 64 / Woods, Tyrell”—meant through the information it contained regarding the results of the analysis of Item 3.1. And, because the true meaning remained—and continues to remain—entirely unknown absent speculation, Woods did not satisfy his burden of establishing trial counsel was deficient for failing to raise an objection or challenge that very well could have resulted in a clarification from the expert that would have been detrimental—as opposed to beneficial—to Woods’s interests. See, e.g., Ward v. Whitley, 21 F.3d 1355, 1362 (5th Cir. 1994) (“It is a basic rule of cross-examination: Never ask a question for which you do not know the answer.”). Beyond that, Woods likewise could not establish the result of his trial would have been different but for trial counsel’s failure to raise a challenge based on the contents of the forensic reports absent total speculation as to what the result of such a challenge would have been. See Glover, 318 S.C. at 499, 458 S.E.2d at 540 (explaining mere speculation standing alone cannot satisfy an applicant’s burden of establishing prejudice); Putnam v. State, 417 S.C. 252, 261-262, 789 S.E.2d 594, 599 (Ct. App. 2016) (“The applicant’s mere speculation what the witnesses’ testimony would have been cannot, by itself, satisfy the applicant’s burden of showing prejudice.” (citation and internal quotations omitted)); cf. Vanover v. State, 433 S.C. 31, 44, 856 S.E.2d 160, 167 (Ct. App. 2021) (“We have no idea what Daughter’s answer or explanation for the Doe allegation would have been. Daughter did not testify at the PCR hearing. We do not see how we could find this alleged deficiency to be prejudicial without some sense of what Daughter’s explanation would have been.”). Accordingly, since Woods failed to meet his burden of establishing both deficiency and prejudice, Woods’s application for post-conviction relief was properly rejected, and the PCR judge’s decision to do so was neither unsupported by the record nor legally erroneous. See Strickland, 466 U.S. at 700 (“Failure to make the required showing of either deficient

performance or sufficient prejudice defeats the ineffectiveness claim.”); Sellner, 416 S.C. at 610, 787 S.E.2d at 527 (instructing a PCR judge’s factual finding will be upheld if supported by any evidence and a post-conviction relief’s judge’s decisions will only be reversed where controlled by an error of law). Woods’s petition for a writ of certiorari should be denied.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted the petition for a writ of certiorari should be denied.

Respectfully submitted,

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