

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Eugene C. Griffith, Circuit Court Judge

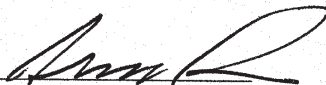
2012-CP-42-4617

Jerod Harris..... Appellant,
v.
The State, Respondent.

NOTICE OF APPEAL

Jerod Harris appeals the Honorable Eugene C. Griffith's Order of Dismissal filed June 21, 2023.

This 21 day of June, 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:
William Blich, Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3970
Attorney for Respondent

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Jerod Harris, #255423,)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE SEVENTH JUDICIAL CIRCUIT

Case No.: 2012-CP-42-4617

ORDER OF DISMISSAL

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 ASST. CLERK

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This matter comes before this Court by way of Applicant Jerod Harris’s post-conviction relief application¹ upon remand from the South Carolina Supreme Court. Pursuant to this remand, an evidentiary hearing was convened November 12, 2019, before this Court. Applicant was present alongside counsel Susannah C. Ross, Esquire. Assistant Attorney General Jacob A. Isenberg of the South Carolina Attorney General’s Office represented Respondent. Applicant and plea counsel Robert Hall both testified.

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismissed this action with prejudice. Specific findings of fact and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 are set forth below:

Procedural History

The records before this Court establish that Applicant is presently confined in the South Carolina Department of Corrections. In May 2011, the Spartanburg County Grand Jury indicted

¹ Applicant filed this post-conviction relief action on November 5, 2012. Respondent originally served its return to this application on February 25, 2014. The matter proceeded to an evidentiary hearing in 2014 and relief was denied. Following disposition of this case, the South Carolina Supreme Court remanded the matter back to the Spartanburg County Court of Common Pleas for a new PCR hearing. Applicant then filed amended applications and Respondent made an amended return to the application in light of the remand.

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Applicant for attempted murder (2011-GS-42-2429). Assistant Public Defender Robert Hall of Spartanburg County Public Defender's Office represented Applicant. Assistant Solicitor Abel Gray of the Seventh Circuit Solicitor's Office prosecuted the case. On May 31, 2012, Applicant appeared before the Honorable J. Mark Hayes, II where he pled guilty as indicted. Pursuant to negotiations entered into between Applicant and the State, Judge Hayes sentenced Applicant to fifteen-years imprisonment. Applicant did not appeal his conviction or sentence.

Thereafter, on November 5, 2012, Applicant filed a timely application for post-conviction relief, alleging he was being held in custody unlawfully based upon ineffective assistance of counsel for failure to investigate and adequately prepare for trial, giving erroneous advice, and denial of his Sixth Amendment constitutional right. Respondent made its Return on February 25, 2014, requesting an evidentiary hearing be held.

A hearing was convened on April 7, 2014, at the Spartanburg County Courthouse before the Honorable J. Durham Cole. Applicant was present and represented by J. Brandt Rucker, Esquire. Suzanne H. White, Esquire, formerly of the South Carolina Attorney General's Office, represented Respondent. At the start of the hearing, Applicant requested to relieve counsel and that a continuance be granted for the evidentiary hearing so that he could retain private counsel. Respondent took no position on the matter. From the bench, Judge Cole granted Applicant's motion and relieved Mr. Rucker as counsel for Applicant. Thereafter, Judge Cole issued a written order dated July 18, 2014, continuing the matter and formally relieving Mr. Rucker as post-conviction relief counsel. Judge Cole further instructed Applicant that the Court would not appoint further counsel if he was unable to retain an attorney.

An evidentiary hearing into the matter was convened on November 4, 2014, at the Spartanburg County Courthouse before the Honorable R. Keith Kelly. Applicant was present and

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proceeded *pro se*. Suzanne H. White, Esquire, again represented Respondent. Applicant and Plea Counsel testified during the evidentiary hearing. By written order signed November 26, 2014, and filed December 2, 2014, Judge Kelly denied and dismissed the matter with prejudice.

Applicant filed a notice of appeal on December 5, 2014. On October 13, 2015, a petition for a writ of certiorari was filed on Applicant's behalf by John H. Strom, Esquire, formerly of the South Carolina Commission of Indigent Defense-Office of Appellate Defense. On certiorari, Applicant argued the PCR court erred in finding that Applicant knowingly, voluntarily, and intelligently waived his right to PCR counsel. Respondent made its Return on March 2, 2016. On February 10, 2017, the South Carolina Supreme Court granted Applicant's petition for a writ certiorari and dispensed with further briefing. Applicant filed his brief of petitioner on March 7, 2017, and Respondent filed its brief of respondent on May 19, 2017. Following submission of briefs, the Supreme Court reversed the PCR court's denial of relief and remanded the matter back to the Spartanburg County Court of Common Pleas for a new evidentiary hearing after the appointment of counsel, finding the PCR court erred by failing to ensure Applicant understood the dangers and disadvantages of self-representation before granting the motion to relieve his appointed attorney. The remittitur was issued on March 16, 2018.

On March 27, 2017, the Spartanburg County Clerk of Court appointed Susannah Ross to represent Applicant. On September 4, 2018, Applicant amended his original application to include the allegations of failure to advise of self-defense claims, erroneously advising to plea in the presence of self-defense case, failure to investigate and use in mitigation history of mental health issues, failure to challenge the indictment, and failure to assure credit given for time served. On September 18, 2019, Applicant again amended his application to include the new allegation of the court lacking subject matter jurisdiction due to invalid indictment procedure.

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A second evidentiary hearing pursuant to this remand from the Supreme Court was convened on November 12, 2019, at the Spartanburg County Courthouse before this Court.

Current Action Before this Court

In his original application, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
 - a. failure to investigate and adequately prepare for trial.
 - b. giving erroneous advice.
 - c. denial of sixth amendment constitutional right.
 - d. failure to advise applicant of his self-defense claims.
 - e. advising to plea when he had a strong defense case.
 - f. failure to investigate and use in mitigation history of mental health issues.
 - g. failure to challenge the indictment.
 - h. failure to assure credit for time served.

2. Lack of subject matter jurisdiction due to invalid indictment procedure.

On August 18, 2019, Applicant, through counsel, served an amended application with the following claims:

1. Ineffective assistance of trial counsel for:
 - (a) failing to advise the Applicant of his self-defense claims;
 - (b) advising him to plea when he had a strong self-defense case;
 - (c) failing to investigate and use in mitigation history of mental health issues;
 - (d) failing to challenge the indictment; and
 - (e) failure to assure credit given for time served.

2. Lack of subject matter jurisdiction due to invalid indictment procedure.

At the PCR hearing, Applicant proceeded forward on the allegation of ineffective assistance of counsel for failure to investigate flaws in the indictment.

Summary of Testimony Presented at Evidentiary Hearing

Applicant's Testimony

Applicant testified that the Grand Jury met and indicted him during a week in May that

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was not during a term of general sessions court. (PCR Tr. 8). Applicant stated therefore, his entire indictment was “no good”. (PCR Tr. 10). Applicant stated “once [Grand Jury] took the oath and didn’t tell the truth period. They killed the whole body of the indictment...and make the indictment null and void”. (PCR Tr. 10). Applicant stated his other allegation against Counsel for ineffective assistance was “he could’ve went ahead and properly investigated the whole case properly because the indictment is the seed of the case”. (PCR Tr. 10).

Applicant stated he mailed two documents to his PCR Counsel, one referencing Grand Jury reporting dates obtained from a fellow inmate, and one referencing void indictments and perjury obtained from a former attorney of his. (PCR Tr. 9). On cross-examination, Applicant stated the indictment is the reason he should not be in jail, but he accepts responsibility for shooting someone four times. (PCR Tr. 12). Applicant testified he pled guilty because he accepts responsibility for his actions and wanted to “go ahead and go about my business and get this over with”. (PCR Tr. 13). Applicant testified he “knew he was guilty of attempted murder”. (PCR Tr. 13).

Counsel’s Testimony

Counsel testified he has been practicing criminal law since 1987 and could not count how many criminal matters he had handled. (PCR Tr. 15). Counsel testified he has been involved in criminal law as a solicitor, judge, and part of the defense bar. (PCR Tr. 16). Counsel stated, “at any given time we have between one hundred and fifty to two hundred clients which would probably be close to six hundred indictments in this circuit”. (PCR Tr. 16). Counsel stated with his current clients he has reviewed almost six hundred indictments and many more as his time as a solicitor. (PCR Tr. 16).

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Counsel testified he began representing Applicant in April 2011. (PCR Tr. 17). Counsel recalled there was not an indictment until shortly before Applicant was coming up on the trial docket. (PCR Tr. 17). Counsel stated that the State offered a plea sentence of twenty years, and he negotiated that down to a fifteen-year offer for Applicant. (PCR Tr. 17). Counsel stated he went over the charge of attempted murder and discovery with Applicant during their first meeting, prior to a preliminary hearing. (PCR Tr. 17). Counsel stated it was his belief Applicant absolutely understood he would be charged with attempted murder. (PCR Tr. 18).

Counsel stated “after the time for offers or just before that, they present cases to the grand jury. Sometimes they do it sooner.” (PCR Tr. 18). Counsel continued, “Mr. Gray tended to wait four or five months, then indict a case. They all do it differently”. (PCR Tr. 18). Counsel stated he brought Applicant the first plea offer of twenty years and Applicant’s concern at that time was “why does Mr. Gray always prosecute [Applicant]”. (PCR Tr. 18). Counsel stated his notes reflected he received the fifteen-year offer, presented it to Applicant and two days later they were in court with the negotiated fifteen-year plea offer Applicant accepted. (PCR Tr. 19). Counsel testified he reviewed the indictment and did not see any issues. (PCR Tr. 20). Counsel recalled looking for specific issues in this indictment, including malice aforethought, which he remembered was a specific issue in an attempted murder indictment that had created a problem for a colleague of his during his experience in the Solicitor’s office. (PCR Tr. 20).

Counsel testified it was his custom to review the elements, the true-bill stamp, the date and signature when reviewing an indictment. (PCR Tr. 20). Counsel stated he “absolutely does this” because he has “actually been getting ready for trial and realized they could not go forward because he has “actually been getting ready for trial and realized they could not go forward because they had some mistakes in [indictment]”. (PCR Tr. 20). Counsel testified he found the indictment to be

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sufficient after review in this case and since reviewed the indictment after the guilty plea and does not see any issues in it now. (PCR Tr. 20-21). Counsel stated the old code pleadings were changed to the current rules as standard practice in 1985 when he graduated from law school and was preparing for the bar, so he has been aware of its applicability since then. (PCR Tr. 21-22). Counsel testified in his legal opinion he gave Applicant, and from the surrounding circumstances, Applicant had notice that he was going to be charged with attempted murder before he pled guilty. (PCR Tr. 22).

Counsel stated he does not know whether the code pleading in the South Carolina Code has been repealed. (PCR Tr.23). In response to whether Rule 3 of the South Carolina Rules of Criminal Procedure has been amended or changed, Counsel stated, “in this Circuit, we operate under a special rule that says that prelims have to be requested by the initial appearance, not the ten days, so several things have changed”. (PCR Tr. 23). Counsel outlined “they have a system [of] procedure that discovery, preliminary hearing request by roughly two months after arrest, and then its plea or trial four months after, has to be announced, [and] there has to be an offer made in a timely manner”. (PCR Tr. 23). Counsel stated that he could not dispute that Rule 3 of the South Carolina Rules of Criminal Procedure states an indictment should be made within ninety days. (PCR Tr. 24).

Findings of Fact and Conclusions of Law

Applicant alleges ineffective assistance of plea counsel and asserts that as a result of counsel’s purported error, he is entitled to have his guilty plea undone and proceed back to the court of general sessions for a new disposition of his case.

This Court has thoroughly reviewed the record in its entirety, including the plea transcript, the appellate records, and the records for this current action. Additionally, this Court heard the

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testimony presented at the evidentiary hearing and was able to observe the witnesses presented at the evidentiary hearing, which allowed the Court to scrutinize the credibility of all witnesses presented. Based on this comprehensive review, this Court finds Applicant has failed to meet his burden of proof as to any of his allegations and finds this action must be denied and dismissed with prejudice. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Plea Counsel

Applicant's claim for relief as set forth in his amended application and at the evidentiary hearing pertain to ineffective assistance of counsel. The Sixth and Fourteenth Amendments to the United States Constitution guarantees Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, post-conviction relief allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in post-conviction relief actions). The allegation of denial of such representation sets forth a prima facie violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction

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or sentence. 466 U.S. at 687. First, the applicant must show that counsel’s performance was deficient; and second, that the deficient performance prejudiced the applicant. Id. at 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The first prong—constitutional deficiency—is “necessarily linked to the practice and expectations of the legal community.” Padilla v. Kentucky, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel’s representation fell below an objective standard of “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The second, or “prejudice” prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel’s deficient performance prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” Strickland, 466 U.S. at 694. Thus, it is not enough “to show the errors had some conceivable effect” on the outcome of the proceeding—counsel’s errors must be “so serious as to deprive the defendant of a fair trial.” Id. at 687 (emphasis added).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel.” Hill, 474 U.S. 52; cf. Padilla, 559 U.S. at 373 (recognizing the

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guilty plea process is a “critical phase of litigation” for purposes of the Sixth Amendment right to effective assistance of counsel). A claim of ineffective assistance of guilty plea counsel requires the applicant present evidence satisfying two prongs: first, evidence that counsel’s performance was deficient; and second, evidence that counsel’s deficient performance prejudiced the defendant by causing him to plead guilty rather than go to trial. Hill, 474 U.S. 52.

This Court finds Applicant cannot meet his burden as to his claim of ineffective assistance of counsel. Applicant alleges Plea Counsel was ineffective for failure to investigate flaws in the indictment. Strickland makes clear that defense counsel “has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” 466 U.S. at 691. When highlighting failure to investigate as a ground for a larger ineffective assistance of counsel claim, judicial determination of this claim’s validity is evaluated for “reasonableness [under] all the circumstances” with “a heavy measure of deference to counsel’s judgments” applied. Id.

Applicant alleged that plea counsel was ineffective for failing to investigate flaws in the indictment. The purported flaw in the indictment that Applicant asserts is that the Grand Jury met to determine his indictment on a date outside of a General Sessions court term which is not in accordance with an old pleadings code. Since 1985, the state of South Carolina has adopted a rule of practice that differs with this old pleadings code. This Court outlined the currently followed procedural rules for court in South Carolina, as follows:

“the procedures employed by the statute and notice requirements to the indictment is that the grand juries are convened and qualified during the first term of General Sessions Court each calendar year and then...the practice is the Chief Administrative Judge sets a meeting date for the Grand Jury.” He adds, “there’s been an order of practice statewide that most grand juries do not meet during the week of General Sessions; they meet the preceding week because of the convenience of the court staff, security, but more importantly the prosecutors and

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the witnesses who have to be called before the grand jury so that doesn't interfere with terms of court and trials".

PCR Tr. 27-28.

Here, the Grand Jury properly met during the May 2011 term as directed by then-Chief Administrative Judge Roger Couch.

The purpose of an indictment is to inform the accused individual of the charge against him. Sufficiency of indictment is found when the offense is stated with enough specificity that the court knows what judgement to announce, and the defendant knows what he has to answer to and whether he can plead acquittal or conviction upon it and whether it apprises the defendant of offense that is intended to be charged. State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005) (citing State v. Wilkes, 353 S.C. 462, 465, 578 S.E.2d 717, 19 (2003)). Applicant was aware of his attempted murder charge well in advance of pleading guilty. The date of which the Grand Jury convened was not a substantive defect on the indictment, and even if it would be, this would not allow Applicant to proceed forward under ineffective assistance of counsel. Here, counsel performed his duty to make a reasonable investigation as to whether or not the indictment was valid. Counsel communicated a credible overview of the accepted professional norms for the Seventh Circuit in administering indictments. Counsel credibly testified it is always his practice to thoroughly analyze the indictment by reviewing the elements, the true-bill stamp, the date, the signature, as well as any other specific issues related to that crime. Counsel testified that he did so with the indictment in this case and found it to be sufficient. Further, in this case, Applicant agreed with the facts as presented by the State, and freely continues to admit his guilt for attempted murder. Thus, counsel would not be led to change his recommendation to plead under these circumstances, Applicant was not prejudiced by this, the legal outcome would not have been

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different. Therefore, this allegation of failure to investigate flaws in the indictment is denied with prejudice.

Conclusion

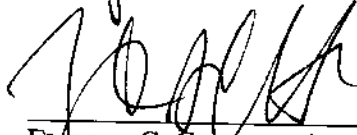
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court notifies the 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. Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an applicant has the right to appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Attention is directed to Rule 243, SCACR for appropriate appellate procedures.

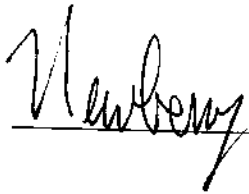
IT IS THEREFORE ORDERED:

1. The PCR application be denied and dismissed with prejudice; and
2. Applicant remains remanded to the custody of Respondent.

AND IT IS SO ORDERED this 8th day of June, 2023.



EUGENE C. GRIFFITH, JR.
Presiding Judge
Seventh Judicial Circuit



_____, South Carolina.

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ALAN WILSON
ATTORNEY GENERAL

June 15, 2023

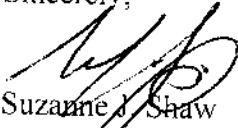
The Honorable Amy W. Cox
Clerk of Court - Spartanburg County
PO Box 3483
Spartanburg, SC 29304-3483

Re: Jerod Harris, #255423 v. State of South Carolina
2012-CP-42-4617

Dear Ms. Cox:

Enclosed please find the original Order of Dismissal signed by the Honorable Eugene C. Griffith, Jr. 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,


Suzanne J. Shaw
Assistant Attorney General

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