

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

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WILLIAMSBURG COUNTY, SC

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

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Robert Lee Reddock, SCDC #270080,

Case No. 2022-CP-45-00092

AUG 21 2023

Applicant,

S.C. SUPREME COURT

v.

**ORDER GRANTING *WHITE V. STATE* REVIEW
AND DISMISSING ALL OTHER ALLEGATIONS**

State of South Carolina,

Respondent.

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I. INTRODUCTION

The matter before this Court is an action for post-conviction relief (PCR) commenced by Robert Lee Reddock (Applicant) on February 4, 2022. On June 13, 2023, a hearing into the matter was convened before the Honorable R. Kirk Griffin at the Sumter County Courthouse. Applicant was present and represented by Timothy Griffith, Esquire. Assistant Attorney General T. Cruise Mitchell represented the State.

After hearing the testimony at the PCR hearing and upon full review of the record, this Court finds Counsel was constitutionally ineffective with regards to informing Applicant about his right to an appeal. Applicant's allegations regarding ineffective assistance of counsel are without merit. For the reasons discussed below, this Court grants Applicant a belated direct appeal, but denies all remaining allegations.

II. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections. During its December 2019 term, the Williamsburg County Grand Jury indicted Applicant for armed robbery and possession of a weapon during the commission of a violent crime (2019-GS-45-00256). Based

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on Applicant's prior convictions, the State noticed Applicant with its intention to seek life without parole pursuant to S.C. Code Ann. § 17-25-45. Applicant was represented by William Joseph Virgil Barr, Esquire. Assistant Solicitors Warren Anderson and Ella Alston of the Third Circuit Solicitor's Office prosecuted the case.

On June 14, 2021, Applicant proceeded to a jury trial before the Honorable R. Ferrell Cothran, Jr. The jury convicted Applicant as indicted and on June 17, 2021, Judge Cothran sentenced Applicant to life imprisonment for armed robbery pursuant to S.C. Code Ann. § 17-25-45. Applicant did not file a direct appeal.

III. STATEMENT OF FACTS

On the morning of July 15, 2019, Applicant entered Vickie's convenience store in Kingstree with a firearm and demanded the store clerk give him money. Surveillance footage from inside the store was admitted at trial. Applicant fled the store with approximately \$877.00 in U.S. currency to a waiting car with his co-defendant (Alex Jamal Patterson), who had been acting as a lookout. A high-speed chase ensued, which resulted in the apprehension of Applicant. Applicant was found wearing the same bleach-stained shirt as the masked perpetrator shown in the surveillance video. Applicant was in possession of the stolen money when apprehended.

IV. CURRENT APPLICATION

Applicant timely commenced this PCR application on February 4, 2022. In his application Applicant alleged he was entitled to relief based on the following grounds:

1. Newly discovered evidence¹

¹ Applicant has framed this claim as one of newly discovered evidence; however, the allegation facially refers to Counsel's failure to present evidence known to exist at the time of trial. Accordingly, this Court construes this claim as an allegation of ineffective assistance of counsel for failing to present a defense of involuntary intoxication based on his co-defendant's statement.

- a. "Attny failed to take the appropriate steps to present to the jury my alibi defense of involuntary intoxication, that my co-defendant provided in his exculpatory statement, relevant to establish my innocence."

2. Ineffective Assistance of Counsel

- a. "Wasn't informed of my rights to appeal. I would've wanted him to appeal the sentence and issued in my case A.S.A.P! I choose a trial to preserve all my rights afforded to me."

At the hearing, Applicant proceeded on both allegations.

V. STANDARD OF REVIEW

An applicant may seek PCR upon the following types of allegations:

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

S.C. Code Ann. § 17-27-20(A).

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. 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).

The reviewing court applies the two-part test outlined in *Strickland v. Washington* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction. 466 U.S. 668, 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Id.* at 687-88; *accord. Cherry v. State*, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

The applicant has the 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); Rule 71.1(e), SCRPC. To prove deficient performance, the applicant must establish that, in light of all the circumstances, the acts or omissions complained of "were outside the wide range of competence" demanded of attorneys in criminal cases. *Strickland*, 466 U.S. at 688. To prove prejudice, the applicant must establish "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." *Id.* Significantly, "the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." *Id.* at 696.

VI. FINDINGS OF FACT & CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After hearing the testimony presented and considering the legal arguments by counsel, as well as the record in this action incorporated by way of the State's return, this Court finds Counsel was constitutionally ineffective with regards to informing Applicant of his right to a direct appeal. This Court further finds Applicant's remaining allegations of ineffective assistance of counsel are without merit. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

Failure to Properly Advise Applicant of His Right to an Appeal

Applicant contends Counsel was ineffective for failing to inform him of his right to an appeal. This Court agrees and finds Counsel did not properly inform Applicant of his right to a direct appeal or pursue an appeal on his behalf.

1. PCR Testimony

Applicant testified he wanted an appeal after trial. Applicant testified he recalls speaking with Counsel about an appeal. Counsel testified he did not recall any discussion regarding a direct appeal. Counsel testified he was not asked to file a direct appeal.

2. Discussion

Trial counsel should have made "certain that the Defendant was fully aware of his rights and in the absence of an intelligent waiver by the defendant either pursue an appeal in his behalf or else, if deemed appropriate by counsel, complied with the procedure set forth in *Anders v. State of California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.E.2d 493." *White v. State*, 263 S.C. 110, 118, 208 S.E.2d 35, 39 (1974). Here, there was nothing in the record to show that Applicant had been

informed of his right to an appeal. Counsel's testimony shows he has no recollection of discussing an appeal. Applicant asserted he wanted an appeal after trial; thus, Applicant has met his burden entitling him to a belated review of direct appeal issues pursuant to *White*.

Failure to Admit Co-Defendant's Statement

Applicant next contends Counsel was ineffective for failing to introduce his co-defendant's statement which could have supported a defense of involuntary intoxication. This Court disagrees and finds the record from trial, Counsel's credible testimony, and Solicitor Warren Anderson's credible testimony refute this allegation.

1. PCR Testimony

At the PCR hearing Applicant testified he did not understand why his co-defendant's statement was not introduced at trial. Applicant claims his co-defendant's statement demonstrates he was involuntarily asleep. Applicant stated he was drunk and asleep in the car during the incident. Applicant testified he wanted to bring up the defense of involuntary intoxication through the statement, but Counsel did not want to use that defense.

Counsel testified that, based on the evidence, he developed a defense strategy of misidentification. Counsel testified the video from inside the store only showed one masked robber who was not readily identifiable. Counsel testified there were two people in the vehicle during the police chase. Based on this, Counsel's strategy was to argue co-defendant was responsible for the robbery. Counsel testified he did not recall anything in co-defendant's statement about Applicant being drunk. Counsel testified he believed the co-defendant not testifying was good for the defense, because the co-defendant would have testified against Applicant. Counsel testified he did not believe anything in co-defendant's statement was beneficial to the defense.

Solicitor testified as to the State's evidence in this case; there was a video that showed a masked man, wearing a bleach stained shirt, come in the store with what appeared to be a gun. Solicitor testified suspect in video then stuffed a brown bag full of money into his pants. A high speed chase ensued ending when the suspect vehicle ran into a ditch. Solicitor testified a foot chase then occurred in the woods and the suspect wearing a bleach stained shirt was revealed to be Applicant. The money was found on Applicant. Solicitor testified Applicant's DNA was recovered from the mask. The gun used in the crime turned out to be an airsoft gun. Solicitor testified co-defendant made two statements in which he described Applicant as the mastermind in this case. Solicitor testified nothing regarding Applicant being drunk or asleep during the crime exists in the statement. Solicitor testified the reason co-defendant was not called as a witness was because he was insane and not competent by the time of trial. Solicitor reiterated there was nothing in co-defendant's statements that exculpated Applicant.

2. Discussion

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing *Strickland*). This Court finds Counsel was not ineffective for failing to introduce co-defendant's statement during trial. Counsel's credible testimony demonstrates there was nothing exculpatory in co-defendant's statement, including any mention of Applicant being drunk or asleep in the car during the commission of the crime. Counsel credibly testified it would not have benefitted Applicant had co-defendant testified at trial, because he would have been an adverse witness to the defense. Furthermore, Solicitor Anderson reiterated nothing exculpatory existed in any of the co-defendant's statements. This Court finds Counsel exercised reasonable professional

judgment in not introducing co-defendant's statement into evidence during Applicant's trial; thus, Counsel was **NOT DEFICIENT** in this regard. Accordingly, this Court finds Applicant's allegation Counsel was ineffective for not admitting co-defendant's statement at trial is **DENIED**.

VII. CONCLUSION

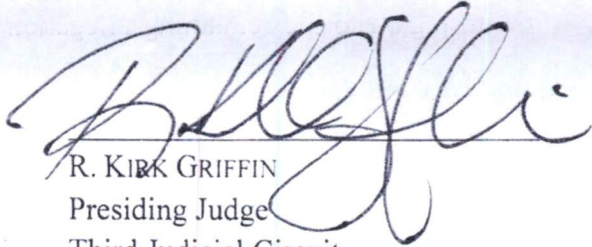
Based on the foregoing, this Court finds that Applicant is entitled to petition the Supreme Court for a belated appellate review pursuant to *White v. State*, 263 S.C. 110, 280 S.E.2d 35 (1974). With regard to the remaining allegation of ineffective assistance of counsel, Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this Court denies relief on the remaining allegation and dismisses this PCR action with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This Court grants Applicant a belated review of his direct appeal issues pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974).
2. The application for post-conviction relief be denied and dismissed with prejudice; and
3. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 9th day of August, 2023.


R. KIRK GRIFFIN
Presiding Judge
Third Judicial Circuit

Santee, South Carolina