

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Lawton Holloway, #379523,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2022-CP-42-04266

ORDER DENYING POST-CONVICTION
RELIEF

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AUG 30 2023

S.C. SUPREME COURT

Addy, J.

THIS MATTER COMES BEFORE THE COURT by way of an application for post-conviction relief (hereafter "PCR") filed on November 4, 2022 by Lawton Holloway (hereafter "Applicant"). This Court convened an evidentiary hearing on June 20, 2023, at the Spartanburg County Courthouse. Applicant was present with counsel, Rodney Richey, Esquire. Applicant testified, and also presented testimony from his sisters and trial attorneys James Price IV, Esquire, and Powers Price, Esquire. Following a thorough review of the record, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations and denies the application with prejudice.

I. Procedural history.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Spartanburg County Clerk of Court. During its October 2017 term, the Spartanburg County Grand Jury indicted Applicant for murder (count one) and possession of a weapon during the commission of a violent crime (count two) (2017-GS-42-05436). Applicant was represented by James H. Price, III, Esquire, James Price IV, Esquire, and Powers Price, Esquire. Deputy Solicitor Derrick Balsa, Esquire, of the Seventh Circuit, and

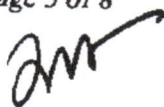
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- of Habitation (p. 516 transcript). The Judge recognized that I qualified for Immunity under Defense of Habitation, therefore, I should have been given Immunity. There was no valid reason for the court to abdicate its power and send my case to trial.
- f. My attorney failed to object to the bias jury charge the Judge read to the jury. "defense of habitation is a defense of one's dwelling . . . now I charge to you that voluntary intoxication is not an excuse or defense to a crime regardless of whether the crime is on involving general or specific intent. A person who voluntarily ingest alcohol and thereby becomes intoxicated is no less responsible for the effect of his acts or words while intoxicated. If one voluntarily drinks intoxicating liquors, wines, or beer, or becomes intoxicated to whatever degree, and while intoxicated commits an act which would be a crime if it had been committed by a sober person, the fact of intoxication would not relieve the intoxicated person from responsibility" (p. 516 transcript). At no point does the Judge educate the jury on trespassing. The Judge never mentioned that J. Bell was three times over the legal limit for alcohol (p. 445 lines 12-21 transcript Lindsey Mitchel, Forensic toxicology expert).
 - g. Appellate attorney, David Gilliam filed my appeal on an issue that was not preserved, Defense of Habitation. This was a wasted opportunity and a valid issue could have been raised.
 - h. The prosecutor made several false statements that my attorney failed to object. "Mr. Holloway walked Jeremy Bell out of the home, but since he never left, he was a welcome visitor (p. 139 transcript, Bulsa). When Bell reentered the home he was trespassing or worse, committing burglary at night.
 - i. Attorney James Price stated that J. Bell had been convicted of assault and battery. He was originally charged with domestic violence out of Darlington. The court would not allow the information. "There was nothing written that states the defense can't introduce prior bad acts for a purpose. Is there a habitual conduct under Rule 406 that might help? How about Rule 608(B) (Bad acts relating to credibility) or Rule 803, hearsay exception."

III. Findings of fact and conclusions of law.

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Effective assistance of counsel does not mean perfect or mistake-free representation. *See Weaver v. Massachusetts*, 137 S. Ct. 1899 (2017) ("[A] defendant has a right to effective representation, not a right to an attorney who performs his duties 'mistake-free.'" (citation omitted)); *Burt v. Titlow*, 571 U.S. 12, 2013 (2013) ("[T]he Sixth Amendment does not guarantee the right to perfect counsel; it promises the right to effective counsel.")



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right to effective assistance[.]”); *Yarborough v. Gentry*, 540 U.S. 1, 8 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). Instead, it simply means assistance that was objectively reasonable under prevailing professional norms. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland*, 466 U.S. at 686; *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel’s performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel’s actions fell outside of the zone of “reasonableness under prevailing professional norms.” *Strickland*, 466 U.S. at 688. *See also* Rule 71.1(e), SCRPC (“The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence.”). Reasonableness is determined by the “variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant,” and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690); *see Dunn v. Reeves*, 141 S. Ct. 2405, 2410 (2021) (noting counsel’s strategic decisions are to be afforded “strong presumption” of reasonableness that the defendant must overcome); *Cullen v. Pinholster*, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to see



2023 AUG 18 PM 4:53
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reasonably considering all the circumstances in order to overcome the presumption of adequate representation). Judicial scrutiny of counsel's performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually "countless" ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel's deficient performance must have prejudiced the applicant so that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Importantly, "[t]he likelihood of a different result must be *substantial*, not just conceivable." *Harrington v. Richter*, 562 U.S. 86, 112 (2011).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

The Court finds Applicant has failed to demonstrate ineffective assistance of counsel. Applicant did not pursue his claim of ineffective assistance of appellate counsel at the evidentiary hearing. That claim is deemed abandoned. Applicant's claims related to trial court error are not cognizable in a PCR action and fail as a matter of law. To the extent Applicant alleges trial counsel was ineffective for failing to achieve suppression of his statements to law enforcement, the Court finds the allegation without merit. Counsel sought suppression of but t



2022 AUG 18 PM 4: 53
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trial court and court of appeals correctly determined his statement was voluntary and admissible. The other allegations will be taken up in turn.

Attorney James Price, III's health concerns.

Attorney James Price, III provided the bulk of representation at trial, but worked closely with co-counsel James Price IV and Powers Price throughout Applicant's case. James Price, III passed away in September 2020. Applicant complains that Attorney Price did not disclose he was having health difficulties and that he would have retained different counsel had he known.

The Court finds this allegation without merit. This Court is unaware of any rule that attorneys must disclose health information to their clients absent an indication that the attorney's poor health could affect his representation. The record and testimony adduced at the evidentiary hearing reflect Mr. Price provided exemplary representation. Applicant failed to demonstrate how Mr. Price's health affected his representation and, therefore, has not shown prejudice.

Attorney James Price III's demeanor.

Applicant alleges Attorney Price was difficult to work with. Based on the testimony presented, the Court finds Applicant has failed to show ineffective assistance in this regard. To the extent that lawyers have different techniques to achieve some measure of client control, whereby the client is ultimately aided in their cause, the Court finds this assertion is not a valid ground for relief. Additionally, nothing in the record indicates that any gruffness on the part of Mr. Price prejudiced Applicant, and Applicant did not show Mr. Price's demeanor adversely affected his representation. Applicant failed to show deficiency or prejudice in this regard.

Failure to argue defense of habitation.

Despite Applicant's claims otherwise, this Court finds trial counsel did present argument related to defense of habitation at the immunity hearing and at trial. To the extent counsel failed

2023 APR 18 PM 4:53
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to preserve a defense of others argument as an independent ground for immunity, Applicant was not prejudiced because the argument would not have been successful and was reasonably encompassed in the trial court's ruling that Applicant failed to show he acted in self-defense. Furthermore, the trial court did give a jury instruction on defense of habitation. (R.515-16). Counsel reasonably chose to focus more on a defense of others theory, which appears to have been a stronger defense based on the evidence. Applicant has failed to establish deficiency or prejudice.

Failure to object to solicitor's argument about the victim being a "welcome visitor."

Applicant failed to show this comment was improper. Moreover, the comment was made at the immunity hearing where the trial court sat as trier of fact. The trial court made its findings based on the evidence presented, not any argument by the solicitor. Applicant has failed to show deficiency or prejudice.

Failure to introduce victim's prior DV conviction.

The record reflects Applicant was unaware at the time of the incident that victim had been convicted of domestic violence. Trial counsel investigated the incident but correctly determined evidence of the conviction was inadmissible. (R.29-30). Furthermore, Applicant would have had to testify to admit this evidence, and counsel's testimony demonstrates he reasonably avoided presenting Applicant as a witness. Applicant has failed to show deficiency or prejudice.

Failure to object to trial court's jury instruction on defense of habitation and voluntary intoxication.

Because the trial court's jury instruction was a correct statement of law, counsel was not deficient for failing to object. As to failure to request an instruction related to trespassing, the Court finds the substance of this area of law was charged to the jury and argued by counsel.

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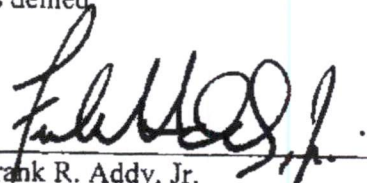
Applicant has failed to show deficiency or prejudice in this regard.

Failure to present offer and explain parole eligibility.

This Court finds credible trial counsel's testimony that all plea offers were relayed to Applicant and that the applicable parole eligibility was explained to Applicant. This Court finds Applicant's testimony, and that of his sisters, not credible in this regard. Counsel's testimony is corroborated by letters to Applicant showing he properly communicated all offers and explained parole eligibility. Counsel advised Applicant to take the offer because it was a "good offer" but Applicant refused. Applicant has failed to show deficiency or prejudice.

IV. Conclusion.

For all the foregoing reasons, the application is denied.



Frank R. Addy, Jr.
Presiding Circuit Court Judge

August 18, 2023
Greenwood, South Carolina

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