THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM JASPER COUNTY
Court of Common Pleas
The Honorable Roger Young, PCR Judge
2022-CP-27-00047

RECEIVED
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S.C. SUPREME COURT

ANEISHA YOUNG, #375749,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Aneisha Young appeals the denial of her post-conviction relief application. The post-conviction relief action was heard and denied by the Honorable Roger Young, circuit court judge, on July 31, 2023, and was denied by written order issued filed on August 25, 2023. Applicant received notice of the judgement on August 28, 2023.

/s Chelsey F. Marto
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Re: Aneisha Young, SCDC #375749 v. State of South Carolina
CA. No. 2022-CP-27-00047

Enclosed in this envelope is an Order of Dismissal dismissing Aneisha Young's PCR application. The order was signed by the Honorable Roger M. Young, Sr., Circuit Court Judge for the Ninth Judicial Circuit.

Please let me know if you have any questions.

FILED
JASPER COUNTY
CLERK OF COURT
2023 AUG 25 A 9:24

Best,

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STATE OF SOUTH CAROLINA COUNTY OF JASPER	FILED JASPER COUNTY CLERK OF COURT 2023 AUG 25 A 9:24	IN THE COURT OF COMMON PLEAS FOR THE FOURTEENTH JUDICIAL CIRCUIT
Aneisha Young, SCDC #375749 Applicant, v. State of South Carolina, Respondent.		Case No. 2022-CP-27-00047 **ORDER OF DISMISSAL**

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Aneisha Young (Applicant) on January 31, 2022. On July 31, 2023, an evidentiary hearing convened before the Honorable Roger M. Young, Sr. Applicant was present and represented by Chelsey Marto, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. At the evidentiary hearing, Applicant testified on her behalf and called as a witness Stephen Plexico (trial counsel). Following a thorough review of the records before this Court and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant did not meet her burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving a cumulative forty-year sentence. In October 2016, the Jasper County Grand Jury indicted Applicant for murder (2016-GS-27-00241), attempted murder (-00251), and possession of a weapon during the commission of a violent crime (-00569). On March 12-15, 2018, Applicant proceeded to a jury trial before the Honorable Carmen T. Mullen. Stephen T. Plexico, Esquire, represented Applicant. Brian Hollen, Patrick Hall, and Lynnor Musser of the Fourteenth Circuit Solicitor's Office prosecuted the case. The jury convicted Applicant as indicated, and Judge Mullen

sentenced her to thirty years for murder, a consecutive ten-year sentence for attempted murder, and a concurrent five-year sentence for the weapon charge.

Applicant filed a timely notice of appeal, which was perfected by Appellate Defender Robert M. Dudek. On appeal, Applicant argued (1) she was deprived due process when the State notified her on the third day of trial that Debbie Spann would testify as a jailhouse snitch; (2) the trial court erred in allowing text messages through a business custodian that were not trustworthy and were unduly prejudicial and confusing; and (3) the trial court erred in qualifying Eric Grabski as an expert in cell phone location data analysis. The South Carolina Court of Appeals affirmed. See State v. Young, 432 S.C. 535, 854 S.E.2d 615 (S.C Ct. App. 2021). The remittitur was sent February 17, 2021.

SUMMARY OF TRIAL TESTIMONY

On April 30, 2016, law enforcement responded to a 911 call placed by Wrenshad Anderson and found Anderson and his brother, Devonte Freeman, behind a fast food restaurant. Freeman had been shot in the back of his head and later passed away. (R. 35-36). Anderson initially told law enforcement that "Peanut" (Eric Darien) and "Dre" (Keandre Frazier) were the perpetrators. (R. 37-38). However, at the scene he later mentioned Applicant. Anderson gave investigators the contact numbers for Darien, Frazier, and Applicant. (R. 41).

Keith Horton, the property manager of the nearby Siesta Hotel, testified he knew Freeman as someone who hung out around the hotel. (R. 120-21). Horton testified he received a call from a female caller with a blocked number at approximately 11:00 pm the evening of the shooting informing him that Freeman—who was on trespass notice—was on the property. (R. 121-22). Horton went to the hotel and spoke to Freeman, who agreed to leave. (R. 124-25). Horton testified Applicant initially approached him at the hotel and told him where Freeman was, and she left with one or two other men just before Freman and Anderson left. (R. 123-25).

Bernard Seabrooks testified he lived at the Siesta, and Freeman and Anderson were hanging out in his room the night of the shooting. He recalled seeing Darien that evening as well. (Tr. 232-35). Likewise, Cedric Riley recalled seeing Freeman and Darien at the Siesta that evening. (Tr. 248-50). He testified Darien had on a black shirt and was initially wearing green pants but later changed into black pants. (Tr. 249-50). Riley testified Applicant went to the hotel that night to pick up Darien; she was wearing a black shirt and black or gray shorts. (Tr. 250-53).

Demitria Williams, who was pregnant with Freeman's child, recalled an incident a few weeks before the shooting where Applicant forced her way inside Williams and Freeman's home, accused Freeman of taking her money, and said she was going to kill Freeman. (R. 102-04).

Anderson testified that shortly before the shooting, he and Darien had a disagreement. (R. 154-55). Similarly, he stated Freeman and Applicant had recently fought over money. Anderson testified that on the day of the shooting, Freeman was hanging out in a friend's room at the Siesta hotel. (R. 156). Anderson met Freeman at the hotel and ran into Darien, who flashed a gun at Anderson. (R. 156). Anderson testified Applicant was also in the hotel room, which was unusual because she did not usually hang out there. (R. 157-58). Anderson stated Applicant was wearing all black. (R. 158). He testified he planned to stay at the Siesta until the property manager asked Freeman to leave. (R. 159-60). Anderson testified he felt funny and sensed something was off as he and Freeman walked away from the hotel. (R. 160).

Anderson testified they were walking on a nearby path and heard leaves rustling followed by gunshots; they started running, but Freeman was hit. (R. 161-62). Anderson testified he saw two figures in all black. (R. 170). He testified he called Darien after the shooting, but he claimed to be in the "country." (R. 175). Anderson also said Applicant repeatedly contacted him the next day, denying her involvement. (R. 175).

Lieutenant Daniel Litchfield testified he located .9 millimeter shell casings and .22 caliber casings at the scene. (R. 211-21, 225). He also interviewed witnesses who confirmed Frazier was playing cards at the Siesta when the shooting occurred. (R. 229-30). Lieutenant Litchfield stated Applicant provided a statement, but Lieutenant Litchfield could not confirm her alibi. (R. 235). He stated he obtained search warrants for Applicant's and Darien's phones. (R. 235-36).

The State introduced text messages from Applicant's phone as well an expert who mapped the location of towers used by Applicant's cell phone. (R. 369, 556-573). According to the mapping testimony, Applicant's cell phone utilized the cell tower nearest to the crime scene between 10:53 pm and 12:34 am the night of the murder, and the phone was likely moving southward on Interstate 95. (R. 369). This contradicted Young's statements to police about her location the night of the murder. (R. 372).

The State also presented testimony from "jailhouse snitches" Marie Powell and Debbie Spann. Both generally testified they were detained with Applicant, and Applicant admitted to killing Freeman. (R. 387-89, 392, 394, 428). Both also relayed that Applicant wanted to have Freeman killed. (R. 396-97, 431). The State rested after Spann's testimony. Applicant did not testify or present any witnesses at trial.

Current Application

Applicant timely commenced this PCR action on January 31, 2022, alleging she is being held in custody unlawfully based on the following:

a. Ineffective Assistance of Counsel: failed to make proper objections;
b. No evidence: all circumstantial based on testimony of cellmates;
c. Due process violation.

Prior to the hearing, Applicant amended her application to allege counsel was ineffective for the following reasons:

a. Failed to argue text messages should be excluded for undue prejudice;
b. Failed to object to leading and hearsay;
c. Failed to object to contemporaneously object Spann's testimony;
d. Failed to object to instruction that malice can be inferred from the use of a deadly weapon;
e. Opened the door for Wrenshed Anderson's statement to be admitted through Rusty Wells;
f. Failed to move for a new trial.

At the PCR hearing, Applicant proceeded only on the allegations in her amended application.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Jasper County Clerk of Court records of the underlying convictions; Applicant's records from the South Carolina Department of Corrections; the records from Applicant's appeal, including the trial transcript; and the records of the current PCR action. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. After a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to carry her burden of proof. Below are this Court's findings of fact and conclusions of law as required by section 17-27-80 of the South Carolina Code.

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When the application alleges ineffective assistance of counsel, the applicant must prove "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. 668. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, an applicant must prove counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989).

Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, a PCR applicant must prove that 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.

Failed to argue text messages should be excluded for undue prejudice

Applicant first contends trial counsel was ineffective for failing to argue text messages should have been excluded based on undue prejudice. She avers the texts were offensive, ambiguous, and not inherently inculpatory, but given their vulgarity they painted Applicant in a bad light. Applicant contends the probative value of the texts were outweighed by the danger of undue prejudice, and counsel was ineffective for not properly preserving this objection. In support, Applicant cites State v. King, 422 S.C. 47, 810 S.E.2d 19 (2017). This Court finds Applicant has not proved counsel was ineffective in this regard.

At trial, the State sought to introduce text messages to and from Applicant's phone; some of the messages were between Applicant's phone and co-defendant Darien's phone, and some were between Applicant's phone and unidentified numbers. Counsel objected, arguing the messages lacked trustworthiness and were not admissible as business records. (Tr. 451, 463). Counsel also argued the texts were unduly prejudicial. (Tr. 452). The Court held an in-camera hearing on the admissibility of the texts and concluded some were probative for impeaching Applicant's statement to law enforcement that she wasn't texting Darien and others were probative to show

Applicant did not deny committing the murder. The trial court allowed the text messages over objection. (Tr. 454-65). When the jury returned, the State entered the following text messages:

Yo call me asap.
Come on sis.
Shawty be trippin. What's dey move?
You good bro?
Yea.

***

I see you hitting n****s what the fire. Welcome to the family fool.
WITNESS.

Already . . . . delete this text NOW. Who told you?

***

Mimi just hmu talking bout you told her I did that sh** . . . smh

***

Not around kuzzo.
Wyd
On my way to NC
Why?
Chillout for uh minute.

***

Mane I ain't gone lie bruh I been hiding out they tryna pin me to this "M" delete this.

***

What's your email?
*****@gmail.com

(Tr. 469-75).

In King, the South Carolina Supreme Court found the trial court abused its discretion in entering into evidence a fifteen-minute jail call placed by the defendant. Pertinently, the Court noted the trial court "adamantly" refused to listen to the phone call before ruling on its admissibility—and thus could not have exercised any discretion under Rule 403. Further, the

Court found the call was "riddled with profanity, racial slurs, and references to prior bad acts," and the probative value of the call was thus outweighed by the danger of unfair prejudice. However, the Court found the admission of the call was harmless, in part because the call itself was difficult to understand.

Here, trial counsel *did* object to the text messages based on undue prejudice, although the Court of Appeals found the Rule 403 objection was not specific enough to preserve the issue for appeal. (Tr. 452). Counsel also objected to the texts as hearsay, but the court admitted them over objection. Overall, although counsel could have more specifically objected based on Rule 403, Applicant did not prove counsel was deficient in this regard. Like trial counsel, Applicant's allegation related to the text messages was vague and not specific. For example, Applicant did not cite to any specific text message that should have been excluded based on undue prejudice but rather generally argued all of them should have been excluded. Ultimately, Applicant failed to overcome the presumption that counsel's performance in this regard fell within prevailing professional norms and thus did not prove deficiency.

Further, this Court finds it is not reasonably likely the text messages would have been excluded had counsel raised a more specific objection under Rule 403. Unlike the King court, the trial court here held a lengthy in-camera hearing where she considered the texts messages the State sought to introduce and the reasons the State sought to introduce them. The trial court found some of the messages were probative for impeaching Applicant's statement to law enforcement and others were probative because they did not contain denials to allegations that Applicant was involved in the murder. Ultimately, the trial court *did* engage in an analysis of the admissibility of the text messages and considered their probative value. Thus, this Court finds it is not reasonably likely the trial court would have excluded the messages had counsel raised a more specific objection under Rule 403.

Finally, this Court finds it is not reasonably likely the Court of Appeals would have reversed had the Rule 403 objection been preserved. Unlike the text messages in King, the text messages here were not riddled with vulgarity or racial slurs. Of the 17 messages introduced, only one contained profanity and only one contained a racial slur. These two messages, however, were probative for showing Applicant did not deny the murders. Although these two messages contained one racial slur and one instance of profanity, this Court finds the prejudicial nature of the profanity and racial slur did not outweigh the probative value of the texts. Overall, this Court finds it is not reasonably likely the messages would have been excluded had counsel more specifically objected under Rule 403. Likewise, this Court finds it is not reasonably likely this would have ben a reversible issue on appeal had it been more specifically preserved. Thus, Applicant did not prove prejudice, and this claim is denied.

Failed to object to leading and hearsay

Applicant contends counsel was ineffective for not objecting to leading and hearsay. This Court finds Applicant did not prove counsel was ineffective in this regard.

During Officer Rusty Well's testimony, the following exchanges occurred:

> Q. All right. And I think you can go ahead and tell us what [Anderson] said when you first got there. Do you recall what you asked him and what his response was?
>
> A. I asked him if he knew who did it. He indicated it was Peanut and Dre.

(Tr. 154).

> Q. . . . Does [Anderson] have any information, further information, about Peanut and Dre that he gives you?
>
> A. He indicates that he has contact numbers for Peanut and Dre in his ell phone. And then, he also identified [Applicant] . . . as somebody else.

(Tr. 156-57). During Anderson's testimony, the following exchange occurred:

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> Q. Do you remember talking to Officer Wells and telling him, when he asked you who the shooters were, do you remember saying Peanut and Dre?
>
> A. Well, I was delusional. Something like that happened to you and you almost got your life taken from you, and these people shooting at you—

(Tr. 286-87). Later, Anderson testified,

> I talked to Mr. Darien. I said, man, I know you was the one come shooting us. I know you was the one shooting us. He sound like he was out of breath, and go talking about he was in—he in the country. I just left the Siesta. Ain't no way he got in the country that fast.

(Tr. 295). Anderson also testified,

> [Applicant] came in Mr. Seabrooks' house and sat on the couch. My brother was up there playing cards . . . . And then, when he seen her, he start apologizing to her, because he knew he done whip her behind or whatever and took her money and all that. But he was past that, because he was having kids, so he was trying to, you know, turn a new leaf in life, so when he seen [Applicant] he started apologizing to her. He was like, man, I'm sorry, doing you like that; I'll eventually pay you back later on. She was like, yeah, yeah, yeah, it's okay, it's okay, it's okay. And when she start doing all that, I kind of felt funny. I was like man, stop apologizing, because she ain't come down here for that. My exact words to him.

(Tr. 298). During the evidentiary hearing, Applicant averred counsel should have objected to the foregoing. Counsel testified that although some of it contained hearsay, it was part of his trial strategy to highlight the fact that when police arrived, Anderson initially identified Peanut and Dre as the shooters—not Applicant.

This Court finds credible counsel's testimony that part of his strategy was to highlight the fact that Anderson initially identified Peanut (Darien) and Dre (Frazier) as the shooters. Further, considering Anderson maintained he saw two shooters, this Court finds this was a reasonable strategy. (Tr. 289). Thus, Applicant did not show counsel was deficient for not objecting.

Likewise, it is not reasonably likely any objection to the foregoing would have changed the outcome of trial. When police initially arrived, Anderson was holding his brother—who had just been shot, and Officer Wells testified Anderson was "very upset" and "excited, upset." (Tr. 153, 155). Thus, had trial counsel objected based on hearsay, this Court finds Officer Well's testimony about Anderson's statements likely would have come in under the excited utterance exception to hearsay. See Rule 803(2), SCRE (providing "[a] statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition" is not excluded by the rule against hearsay). Further, the statements provided by Officer Wells were cumulative to Anderson's trial testimony, and Anderson's statements about what Freeman said to Applicant were cumulative to Williams's testimony that Applicant had previously accused Applicant of stealing her money. (Tr. 222-23, 286-87, 289). Finally, it is not reasonably likely the jury convicted Applicant based on Anderson's statement that Darien said he was in the country. Overall, Applicant has not shown the foregoing would have been excluded with an objection or the outcome of trial would be different without this testimony. Thus, Applicant did not prove prejudice, and this claim is denied.

Failed to contemporaneously object Spann's testimony

Applicant asserts counsel was ineffective for not contemporaneously objecting to Spann's testimony. This Court finds Applicant has not shown counsel was ineffective in this regard.

On the third day of trial, the State relayed to the Court that it had just located and subpoenaed Debbie Spann, a jailhouse snitch, and the State expected her to testify that Applicant confessed to the murder while they were detained together. (Tr. 372-73). Counsel moved to exclude her testimony, arguing the State did not provide a witness statement indicating what Spann would testify to, in violation of due process, Rule 5, and Brady. (Tr. 374-78). The trial court denied counsel's motion, noting Spann had been on the State's witness list and trial counsel could

speak to Spann before she testified. (Tr. 373, 379). Counsel did not renew his objections prior to Spann's testimony.

Ultimately, this Court finds Applicant failed to show a reasonable likelihood that a further objection would have changed the outcome of trial. Based on the trial court's consideration of this matter and its decision to allow Spann's testimony, this Court finds it is not reasonably likely the trial court would have changed its decision had trial counsel renewed his objection. Further, Applicant did not articulate what further objection should have been raised—other than a renewal of the prior objection—and thus did not meet her burden of proof in this regard. Finally, this Court finds it is not reasonably likely the Court of Appeals would have reversed on this ground had this issue been preserved, especially considering the Court's finding that Spann's testimony was cumulative to Powell's testimony and thus was harmless. Overall, the State submitted other compelling evidence of Applicant's guilt, including witnesses who testified to seeing her leave the Siesta shortly before the shooting; testimony that she was wearing black that night; Anderson's testimony that the shooters were wearing black; Anderson's identification of Applicant as a shooter; evidence that Applicant had a prior altercation with Freeman; text messages wherein Applicant did not expressly deny her involvement; and Powell's testimony that Applicant confessed to the murder. This Court finds Applicant did not show a reasonable likelihood (1) Spann's testimony would have been excluded had counsel renewed his objection, (2) the outcome of trial would have been different without Spann's testimony, or (3) the outcome of Applicant's appeal would have been different had this issue been preserved. Thus, Applicant did not prove prejudice, and this claim is denied.

Failure to object to inferred malice instruction

Applicant next contends trial counsel was ineffective for failing to object to the trial court's jury charge that malice can be inferred from the use of a deadly weapon. Applicant has not shown counsel was ineffective in this regard.

At the PCR hearing, counsel acknowledged the trial court gave an inferred malice charge that was no longer good law in South Carolina. However, counsel explained that under the law that existed at the time of Applicant's trial, the instruction was proper as long as no evidence was presented that would reduce, mitigate, excuse, or justify the homicide. State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009). Counsel further explained that no evidence was presented that would reduce, mitigate, excuse, or justify the homicide, making the charge proper under existing law.

This Court finds Applicant did not prove counsel was deficient for not objecting because the charge was proper under the law that existed at the time of Applicant's trial. Although our Supreme Court has held the instruction that malice may be inferred from the use of a deadly weapon is no longer good law in South Carolina, that case was decided *after* Applicant's trial. See State v. Burdette, 427 S.C. 490, 832 S.E.2d 575 (2019). Under the law that existed at the time of Applicant's trial, counsel correctly concluded the charge was proper because no evidence was presented that could reduce, mitigate, excuse, or justify the homicide. See Belcher, 385 S.C. at 597, 685 S.E.2d at 802. Thus, counsel articulated a valid reason for not objecting and was not deficient. Further, counsel is not required to anticipate changes in the law. See Thornes v. State, 310 S.C. 306, 309-10, 426 S.E.2d 764, 765 (1993) ("This Court has never required an attorney to anticipate or discover changes in the law, or facts which did not exist, at the time of the trial."). c.f. Burdette, 427 S.C. at 504 n. 3, 832 S.E.2d at 583 n. 3 (noting the Burdette decision "overrules in part a considerable amount of South Carolina case law"); id. at 505, 832 S.E.2d at 583 (providing Burdette would "*not* apply to post-conviction relief" (emphasis added)). Based on the foregoing,

Applicant has not shown counsel was ineffective for not objecting to the implied malice charge.

Opened the door for Anderson's statement

Applicant next avers counsel was ineffective for opening the door for Anderson's statement to be admitted through Officer Wells. This Court finds Applicant did not prove counsel was ineffective in this regard.

During cross-examination of Officer Wells, the following exchange occurred:

> Q. . . . And in that, you put down that the suspects that Wrenshed Anderson told you was Peanut and Dre, correct?
>
> A. Yes, sir.
>
> Q. All right. Then you have a—and do you know a Nisha Jones, who was—would that be Dre's girlfriend, Nisha Jones?
>
> A. I don't know any of them prior to this incident.
>
> Q. Okay.
>
> A. Have no idea.
>
> Q. Do you know a Tynisha Jones, T/Y-neisha Jones?
> A. No, sir.
>
> Q. Okay. All right. But you only put down in there that Neisha. Okay?
>
> A. Yes, sir.
>
> Q. Now, you never put in that statement—you may have mentioned the word Neisha one time, correct? Toward the bottom?
>
> A. Yes, sir.
>
> Q. And what context is that in?
>
> A. If I may read the last paragraph?
>
> Q. Read the sentence. The last sentence, yes.
>
> A. The last paragraph of my narrative indicates that:

> *Anderson, at some point in time during his excited stated, indicated that he had in his cell phone the contact numbers for Peanut and Dre. He also included a third name of Aneisha. He further indicated several times that Peanut and Dre were the suspects. Anderson also indicated that Freeman and Peanut had a beef all day. I obtained a written—voluntarily written statement from Anderson. Anderson was provided a copy of the statement.*

(Tr. 164-65). On redirect, Officer Wells read Anderson's statement into evidence:

> *We just left the Siesta. Weekly rentals. Talking to Mr. Horton. And we was walking to Econo Lodge. When we got close to KFC path, that's when we heard shots.*
>
> . . . .
>
> *Vonte got into it with Peanut earlier today, and we saw Neisha and her friend. That's when we was ordered to leave. That's when we left walking, and they sneak up behind us and started shooting.*

(Tr. 177).

During the PCR hearing, counsel agreed he may have opened the door for the State to read Anderson's statement into evidence. However, he reiterated his general strategy of highlighting for the jury that Anderson initially implicated Dre and Peanut—not Applicant—as the shooters. When asked whether Anderson's statement implicated Applicant, counsel responded, "Yes and not. It still doesn't say she's the shooter. He mentions her name but does not say she's shooting—she's just there."

This Court finds credible counsel's testimony that he was attempting to highlight the fact that Anderson initially named Peanut and Dre as the shooters. This Court further finds this strategy was reasonable, especially in light of Anderson's testimony that there were two shooters. (Tr. 289). Counsel's cross-examination here was consistent with his overall strategy of highlighting the fact that Anderson did not initially name Applicant and was thus reasonable under prevailing professional norms. Further, the statement itself referenced "Neisha" rather than "Aneisha." (Tr. 177). During cross-examination, trial counsel attempted to insinuate "Neisha" referred to someone

other than Applicant—which this Court finds to be a reasonable strategy under prevailing professional norms. Thus, Applicant did not show counsel was deficient in this regard.

Further, it is not reasonably likely that Officer Well's reading of this statement changed the outcome of trial. To the extent the jury interpreted "Neisha" as referring to Applicant, the statement was cumulative to Officer Well's direct testimony that Anderson provided the name "Aneisha" to him at the scene. (Tr. 157). It was also cumulative to Anderson's testimony that he provided law enforcement with Applicant's name when police responded. (Tr. 288). Thus, it is not reasonably likely the admission of this statement changed the outcome of trial, and Applicant has not shown prejudice.

Failing to move for a new trial

Applicant contend counsel was ineffective for failing to move for a new trial. Applicant did not prove counsel was ineffective in this regard. Applicant did not set forth any basis for a motion for a new trial in her amended application or at the evidentiary hearing other than a general allegation that counsel should have moved for a new trial. Without setting forth a more specific basis to move for a new trial, Applicant has not met her burden of showing counsel was deficient in this regard. Likewise, without articulating a valid basis upon which the court may have granted a new trial, Applicant has not proven prejudice. This Court finds no valid basis would warrant a new trial; thus, counsel was not deficient for not requesting a new trial, and Applicant was not prejudiced by his failure to do so.

CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice.

Should Applicant wish to secure appellate review, she must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Applicant has the right to an 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). If Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on her behalf. Rule 71.1(g), SCRCP. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and

2. Applicant shall be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS ___ day of 8/15, 2023.

ROGER M. YOUNG, SR.
Presiding Judge
Fourteenth Judicial Circuit

Chesterfield, South Carolina