

ATT
C/S
SOL
AG

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Douglas Lavance Young, #2945527,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2023-CP-10-0090

RECEIVED

Oct 13 2023

ORDER OF DISMISSAL

SC Court of Appeals

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This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Douglas Lavance Young (Applicant) on January 6, 2023. Respondent filed a return requesting an evidentiary hearing. On August 22, 2023, an evidentiary hearing convened before the Honorable Michael G. Nettles. Applicant was present and represented by Christopher L. Murphy, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. At the hearing, Applicant testified on his behalf. Respondent called as witnesses Assistant Public Defender Nicolas G. D'Angelo (trial counsel) and former Appellate Defender Adam S. Ruffin (appellate counsel). Following a thorough review of the records before this Court and the testimony and evidence presented at the hearing, this Court finds Applicant did not meet his 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 thirty-five-year sentence. In February 2018, the Charleston County Grand Jury indicted Applicant for murder (2018-GS-10-558) and possession of a weapon during the commission of a violent crime (2018-GS-10-559). On December 2-4, 2019, Applicant proceeded to a jury trial before the Honorable Edgar W. Dickson. Nicholas D'Angelo and Benjamin Lewis, Esquires, represented Applicant, and Assistant Solicitors David Osborne and Shanon Elliott represented

#K740579 - #2018-GS-10-00558 #K740580 - #2018-GS-10-00559

her to drive him around the corner. (Tr. 174). Brisbane testified Applicant got in her car and directed her where to go; he later got out of the car. (Tr. 174-75). Brisbane stated Applicant told her, "You didn't see nothing." (Tr. 176). Brisbane testified she did not know Applicant's first name, but she knew he was a Young. (Tr. 183). She later identified him from a photo lineup. (Tr. 186).

Commander Duston Thompson testified he responded to the scene. (Tr. 90-91). He stated the maroon vehicle, which was identified as a GMC Envoy, was located a block or two away from where the shooting occurred; he had it towed for processing. (Tr. 93-94). Nova Grilli, an expert in latent print examination, testified a fingerprint recovered from the GMC's passenger exterior door matched Applicant's left palm. (Tr. 155). Sarah Zapata, an expert in DNA analysis, testified DNA swabbed from a beer can that was located at the scene of the shooting matched Applicant's DNA. (Tr. 105-06, 221-22).

Crime scene investigator Holly Saunders responded to the scene of the shooting and collected four fired .9 Luger shell casings. (Tr. 97, 101, 103). Michelle Eichenmiller, an expert in firearms identification, testified the four casings were .9 Luger cartridge cases fired by the same weapon. (Tr. 213-14). She stated a bullet fragment recovered from the autopsy was consistent with being fired by a .9 caliber bullet. (Tr. 213).

Kim Rivers, who was subpoenaed by the State against her wishes, testified she and Applicant grew up on the same street. (Tr. 141-43). She acknowledged Applicant approached her on the morning of the shooting but claimed she did not recall what he said to her. (Tr. 142-43). Rivers also claimed she could not recall what she told law enforcement about her conversation with Applicant. (Tr. 143-45). Rivers likewise claimed she did not recall telling Brisbane that Applicant approached her after the shooting and asked her to hold a weapon for him. (Tr. 146).

admitting on properly, despite counsel's objection."

h. "Appellate courts erred in granting Appeal Counsel's motion to be relieved with out a proper investigation of merits." "Appeal counsel's Anders' brief was premature and defendant was not allowed to contest or raise objection. Counsel also failed to file motion to appoint new counsel, as appeal counsel is still defense counsel in appeal."

i. "Appeal counsel was ineffective by not raising trial counsel's objections in appeal." "Appeal counsel raised no claims to any of trial counsel's objection. Precluding any question of law from any superior courts.

At the PCR hearing, Applicant proceeded only on the following allegations of ineffective assistance of counsel:

1. Failed to call witnesses;
2. Failed to challenge cell phone evidence;
3. Failed to object to self-defense charge as incomplete and/or request additional language for the charge;
4. Failed to obtain favorable offer;
5. Failed to adequately prepare for trial.

Applicant also generally alleged appellate counsel was ineffective. Applicant did not present any testimony, evidence, or argument on his remaining allegations, and this Court finds he has waived them.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Charleston County Clerk of Court's records from the underlying conviction, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the records from this PCR action. This Court further had the opportunity to observe witnesses 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

who would have said the victim had a gun. He stated one of his cousins was in the hospital with a newborn at the time of his trial and the other cousin was out of town. Applicant testified he also wanted counsel to call an officer from another county to testify the victim was aggressive. Applicant acknowledged that officer was not at the scene and did not witness the shooting.

Trial counsel testified he was appointed around the time of Applicant's bond hearing and remained his attorney through trial. He stated Applicant had several witnesses he wanted counsel to talk to, but counsel was only able to get in touch with Applicant's uncle—whom he called as a witness at trial. Trial counsel stated Applicant initially claimed he was not the shooter and did not agree with a self-defense strategy until about seven days before trial. Ultimately counsel was unable to legally subpoena the officer in time for trial, and he stated the officer was not willing to testify without being subpoenaed. He further testified the officer did not become a relevant witness until their strategy changed to self-defense.

This Court finds Applicant has failed to prove counsel was ineffective in this regard. Notably, Applicant did not call any witnesses other than himself at the PCR hearing and thus did not prove prejudice. See Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995) (providing an applicant cannot establish prejudice from counsels' failure to call witnesses when those witnesses don't testify at PCR hearing).

This Court further finds credible trial counsel's testimony that he attempted to contact the witnesses Applicant asked him to contact but was not able to reach them. Likewise, this Court finds credible counsel's testimony that Applicant did not agree with a self-defense strategy¹ until shortly before trial, which did not leave counsel sufficient time to subpoena the officer. As counsel explained, there was no basis to attempt to introduce character evidence of the victim if they were not pursuing self-defense—and thus no basis to call the officer as a witness. Based on

¹ According to counsel, Applicant did not believe he was entitled to claim self-defense due to prior convictions.

claiming self-defense “has the right to act on appearances, even though the defendant’s beliefs may be mistaken.” (Tr. 426). This Court agrees there was no basis to object and thus finds counsel was not deficient for not objecting. Further, because the self-defense charge was complete and proper, it is not reasonably likely the outcome would have been different had counsel objected. Thus, Applicant did not prove deficiency or prejudice, and this claim is denied.

Failed to obtain favorable offer

At the PCR hearing, Applicant testified counsel relayed a twenty-five-year plea offer to him that he turned down because he did not believe he committed murder. In contrast, trial counsel testified he attempted to negotiate an offer but the solicitor was unwilling to negotiate. Counsel stated he never obtained a twenty-five-year offer—or any offer—from the State.

This Court finds Applicant has not shown counsel was ineffective in this regard. Initially, this Court finds credible trial counsel’s testimony that he attempted to negotiate but the solicitor was unwilling to negotiate, and counsel never obtained a favorable offer. This Court finds trial counsel could not compel the State to make a favorable offer, and counsel’s performance in this regard was reasonable under prevailing professional norms. Thus, Applicant did not prove deficiency. Applicant likewise did not prove prejudice—i.e. that he would have accepted a favorable offer. Pertinently, Applicant believed the State had offered him twenty-five years, but he stated he turned it down because he did not believe it was murder. In light of that, this Court finds Applicant did not prove a reasonable likelihood that the outcome would have been different—i.e. he would have accepted an offer—had counsel been able to procure a favorable offer. Thus, Applicant did not prove prejudice, and this claim is denied.

further testified the Court of Appeals provided Applicant an opportunity to submit his own pro se brief—which Applicant did, and after its review the Court of Appeals dismissed Applicant’s appeal. This Court finds the foregoing testimony by appellate counsel to be credible. This Court further finds that based on counsel’s review of the transcript and his conclusion that there were not any meritorious issues to raise, counsel was not deficient for filing an Anders brief. Finally, Applicant did not set forth any meritorious, preserved issue that could have been raised and thus did not prove prejudice. Thus, this claim is denied and dismissed with prejudice.

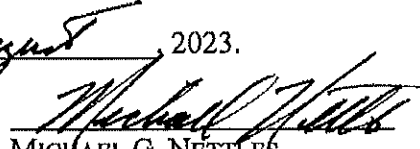
CONCLUSION


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, he 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 his behalf. Rule 71.1(g), SCRCP. Attention is directed to Rule 243, SCACR, for 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 28 day of August, 2023.


MICHAEL G. NETTLES
Presiding Judge
Ninth Judicial Circuit

, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

Douglas Lavance Young, #294552,

Applicant,

v.

State of South Carolina,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Order of Dismissal has been served upon the applicant by mailing one copy in the United States mail, postage prepaid, addressed to:

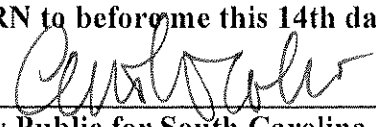
**Christopher L. Murphy, Esquire
Murphy Law Offices, LLC
146 Fairchild Street, Suite 130
Charleston, SC 29492**

This 14th day of September, 2023.



Vickie Hall, Legal Assistant
for Respondent

SWORN to before me this 14th day of September, 2023.



Notary Public for South Carolina.

My Commission Expires: 5/20/2025



ALAN WILSON
ATTORNEY GENERAL

September 14, 2023

Christopher L. Murphy, Esquire
Murphy Law Offices, LLC
146 Fairchild Street, Suite 130
Charleston, SC 29492

Re: Douglas Lavance Young, #294552 v. State of South Carolina
Case No.: 2023-CP-10-00090

Dear Mr. Murphy:

Enclosed is a copy of the filed Order of Dismissal for the above-captioned case signed by The Honorable Michael G. Nettles and filed with the Charleston County Clerk of Court.

Sincerely,

Danielle Dixon
Assistant Attorney General

DD/vh
Enclosed for Service