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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

ORDER OF DISMISSAL

FILED
2023 SEP 13 AM 11:42
JUDICIAL DEPARTMENT
CLERK OF COURT
JR

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

the State. The jury convicted Applicant as indicted, and Judge Dickson sentenced Applicant to concurrent terms of thirty-five years for murder and five years for the weapon charge.

Applicant filed a direct appeal, and Appellate Defender Adam Sinclair Ruffin submitted a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The Court of Appeals dismissed Applicant's appeal pursuant to Anders. The remittitur was sent March 11, 2022.

SUMMARY OF TRIAL TESTIMONY

During Applicant's trial, Zoe Whittaker, who lived in the East Side area of Charleston, testified she heard a gunshot as she was getting ready for work. (Tr. 74-75). She looked out the window and saw a man holding a gun. (Tr. 75). Whittaker ran to her room to call 911; during that time, she heard more gunshots. (Tr. 75). She looked outside again and saw the same man holding a gun. (Tr. 76). Thereafter, the man got into a maroon vehicle. (Tr. 76). During Whittaker's testimony, the State entered her 911 call into evidence over objection.

Officer Jacob Bradshaw testified he responded to the 911 call of shots fired in the East Side area. (Tr. 60-61). When he arrived, he noticed a man lying on the sidewalk and requested EMS. (Tr. 61-62). Thereafter, Officer Bradshaw began looking for a maroon SUV; he noticed the vehicle and stopped it. (Tr. 65-66). Kathy Brisbane was driving the vehicle. (Tr. 67).

Brisbane testified she had previously lived in the East Side area of Charleston and was familiar with Applicant's family. (Tr. 158-59). She testified she had dated Applicant's uncle, Gerald Young. (Tr. 159-60). Brisbane testified she was driving to work on the morning of the shooting when she saw Applicant pointing a gun at another man standing on the corner. (Tr. 162-65). She stated she began blowing her horn to distract Applicant from shooting, but Applicant shot the man three times. (Tr. 162-66). Brisbane clarified the other man had his hands up and did not have a gun. (Tr. 164-65). After Applicant shot the man, Brisbane yelled at him and asked what he was doing. (Tr. 174). Brisbane testified Applicant recognized her and asked

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).

After the State rested, Applicant testified in his defense and claimed he shot the victim in self-defense. (Tr. 308-15). Applicant also called Gerald Young, who testified he had seen the victim earlier that evening with “what appeared to be a lump of a gun in his pants.” (Tr. 297-99). The State called two rebuttal witnesses to authenticate Applicant’s jail calls. (Tr. 360-68).

CURRENT APPLICATION

Applicant timely commenced this PCR action on January 6, 2023, asserting he is being held in custody unlawfully due to ineffective assistance of counsel. Specifically, he alleged:

- a. “Indictment is obviously defective”: “Jury foreman did not give verdict on face of true bill indictment.”
- b. Trial counsel was ineffective in failing to investigate and/or raise objections pursuant to Rule (3), SCRCrimP: Missed deadlines on processing warrants violated Applicant’s due process rights.
- c. “Judge erred in allowing jury to possess evidence not admitted”: “Jury requested bodycam video not admitted into evidence properly. Defense counsel’s objection was preserved, and agreed to bring bodycam video by certain footage. By allowing entire CD, judge allowed jury to view evidence not admitted, successively behind footage objected to.”
- d. Appellate counsel was ineffective in failing to investigate face of indictment and clarify its deficiency: “Appeal counsel raised no objections to clarify the deficient indictment, which would warrant some attention.”
- e. “Counsel was ineffective in failing to file a motion for a new trial due to there being no evidence beyond a reasonable doubt of self-defense.”: “Counsel was ineffective due to jury admitting reason of verdict, which did not lawfully meet the ‘reasonable doubt’ burden to deny self-defense claim.”
- f. “Trial counsel failed to object to extraneous influence of solicitor calling defendant a murderer and addressing the jury to convict him as such.”: “Solicitor stated defendant was a murderer to law abiding citizens, potentially influencing jury to construe evidence to satisfy murder conviction as instructed by solicitor.”
- g. “Judge erred in allowing full CD of bodycam into jury deliberation, despite earlier counsel’s objection.”: “Second bodycam was admitted to jury and not placed on record, by

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

finds Applicant has failed to carry his 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 (2017).

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." Id. (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 call witnesses

At the PCR hearing, Applicant testified he met with trial counsel "a lot" to discuss the case. He testified he had several witnesses he wanted counsel to call, but counsel only called his uncle Gerald Young at trial. Applicant relayed he asked counsel to speak to two of his cousins,

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.

the foregoing, this Court finds counsel's investigation into these witnesses was reasonable under prevailing professional norms, and Applicant did not prove counsel was deficient. Thus, Applicant has failed to prove counsel was ineffective.

Failed to challenge cell phone evidence

Applicant contends counsel was ineffective for not challenging cell phone evidence. At the PCR hearing, he asserted the State did not have a proper warrant to obtain data from his cell phone. Counsel testified, however, that the State did not enter any evidence from Applicant's phone at trial. He explained the State obtained evidence showing which cell towers Applicant's phone used, but that became a moot issue once Applicant decided to proceed on self-defense.

This Court finds Applicant has not shown counsel was ineffective in this regard. Critically, the State did not enter any evidence from Applicant's cell phone at trial; thus, Applicant cannot show it is reasonably likely the outcome of his trial would have been different had counsel challenged the State's warrant to obtain this evidence. Likewise, Applicant has not shown counsel was deficient in this regard. Based on the fact the State did not seek to enter any evidence from Applicant's phone, there was no basis to challenge that evidence. Thus, Applicant has not shown counsel was ineffective.

Failed to object to self-defense charge

At the PCR hearing, Applicant alleged counsel was ineffective for not objecting to the Court's instruction on self-defense or requesting additional language. Specifically, he contended counsel should have requested language that he had the right to act on appearances. Applicant has not shown counsel was ineffective in this regard.

At the PCR hearing, counsel testified he did not see any issues with the self-defense charge the trial court gave. This Court has reviewed the Court's charge on self-defense and finds it to be complete and accurate. (Tr. 425-28). Notably, the Court *did* charge that a defendant

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 reasonably 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.

Failed to adequately prepare for trial

In addition to the foregoing claims, Applicant generally alleged counsel was not prepared for trial. This Court finds Applicant did not meet his burden of proof in this regard. At the PCR hearing, counsel testified he had adequate time to prepare, and this Court finds counsel's testimony in this regard to be credible. Further, a review of the trial transcript shows counsel was prepared for trial and made necessary objections and arguments. Applicant has not set forth what more counsel could have done that would have reasonably changed the outcome of trial and thus has not shown deficiency or prejudice in this regard. Thus, this claim is denied.

Ineffective Assistance of Appellate Counsel

At the PCR hearing, Applicant generally alleged appellate counsel was ineffective for filing an Anders brief rather than raising any meritorious issues. This Court finds Applicant has not proven appellate counsel was ineffective in this regard.

A defendant is entitled to effective assistance of appellate counsel. Southerland v. State, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999). Generally, in analyzing a claim of ineffective assistance of appellate counsel, the Court applies the Strickland test just as it would when analyzing a claim of ineffective assistance of trial counsel. Southerland v. State, 337 S.C. at 616, 524 S.E.2d at 836. Thus, an applicant must prove 1) appellate counsel's performance was deficient, and 2) the applicant was prejudiced by appellate counsel's deficient performance. Bennett v. State, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009). To prove prejudice, the applicant must show that, but for counsel's errors, there is a reasonable probability he would have prevailed on appeal. Anderson v. State, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003).

This Court finds Applicant has failed to prove appellate counsel was ineffective. At the PCR hearing, appellate counsel generally explained the Anders procedure. He testified he reviewed Applicant's trial transcript and did not find any meritorious, preserved issues. He

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.

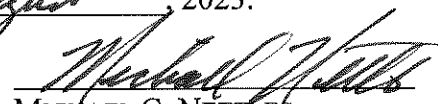
CONCLUSION


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), SCRCR. 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