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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable Kristie F. Curtis, Circuit Court Judge

Case No. 2020-CP-32-03026

Heather M. Lawson, #373466, Petitioner,

v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

Applicant, Heather Lawson, appeals the order of the Honorable Kristie F. Curtis, filed on or about November 13, 2023.



November 20, 2023

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Solicitor's Office prosecuted the case.

On August 7, 2017, Applicant proceeded to a jury trial before the Honorable R. Knox McMahon. The jury convicted Applicant as indicted. Judge McMahon sentenced Applicant to life imprisonment.

Applicant filed a timely notice of appeal. Chief Appellate Defender Robert M. Pachak perfected Applicant's appeal by filing an *Anders*¹ brief with the Court of Appeals on the following issues:

Whether the trial court erred in denying trial counsel's motion for a directed verdict when the State failed to prove sufficient circumstantial evidence beyond a reasonable doubt that [Applicant] committed the crime of homicide by child abuse?

On April 29, 2020, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence. *State v. Lawson*, 2020-UP-120 (S.C. Ct. App. filed April 29, 2020). The case was remitted back to the circuit court on June 10, 2020. Applicant commenced this PCR action on September 14, 2020.

FACTUAL SUMMARY

On June 26, 2016, Applicant beat her seven-month-old baby to death by repeatedly punching the baby in the head with her fists. (R. p. 148). The only people present in the home at the time of her death were Applicant, her one-year old daughter, and her three-year old son. (R. p. 148). Later that evening, Applicant left her toddlers at home alone and ran to her ex-husband's house for help. (R. p. 148–49). Applicant claimed she had just found the baby in her pack 'n play under a heavy blanket. (R. p. 148–49). The child was not breathing. (R. p. 148–49).

Applicant's ex-husband's girlfriend called 9-1-1 while he took Applicant back to her house

¹ *Anders v. California*, 386 U.S. 738 (1967).

and instructed her to call 9-1-1. (R. p. 149). Applicant told the dispatcher that her other kids smothered the baby and jumped on her. (R. p. 149). When EMS arrived, they discovered bruising all over the baby's head. (R. p. 149). Slight rigor mortis had already begun to set in. (R. p. 149). EMS nonetheless attempted all live-saving procedures while rushing the baby to the hospital. (R. p. 149). The child was pronounced dead at the hospital.

CURRENT APPLICATION

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

1. "Ineffective counsel."
 - a. "There were several things he should have done and he did not."
2. "New evidence."

At the hearing, Applicant raised the following additional allegations:

1. Counsel was ineffective for failing to call witnesses, specifically character witnesses and the coroner.
2. Counsel was ineffective for failing to develop a trial strategy.
3. Counsel was ineffective for failing to effectively cross examine witnesses.
4. Counsel was ineffective for failing to address a claimed conflict of interest between Detective Barr and Applicant. Detective Barr was friends of Applicant and her family.
5. Counsel was ineffective for failing to present defense that Richard Tuckus was the last adult in the room with her baby when she died.

Applicant went forward only on the allegations raised during the PCR hearing.

INEFFECTIVE ASSISTANCE OF COUNSEL, GENERALLY

In a PCR action, Applicant bears the burden of proving the allegations in her application by a preponderance of the evidence. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985); Rule 71.1(e), SCRPC. Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "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 v. Washington*, 466 U.S. 668, 686 (1984); *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*. First, Applicant must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 687; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures 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). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "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). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." *Yarborough*, 540 U.S. at 6; *see also Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable.").

Second, counsel's deficient performance must have prejudiced 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 (quoting *Strickland*, 466 U.S. at 694). "This does not require a showing that counsel's actions 'more likely than not altered the outcome,' but the difference between *Strickland*'s prejudice standard and a more-

probable-than-not standard is slight and matters ‘only in the rarest case.’” *Harrington*, 562 U.S. at 111-12 (quoting *Strickland*, 466 U.S. at 697). “The likelihood of a different result must be substantial, not just conceivable.” *Id.* at 112.

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.

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 Applicant’s 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 Call Witnesses

Applicant contends counsel was ineffective for failing to call witnesses on Applicant’s behalf, specifically character witnesses and the coroner. This Court disagrees and finds counsel was not ineffective in this regard.

1. PCR Testimony

Applicant testified she asked counsel about the possibility of calling character witnesses,

but he dismissed it. (PCR Tr. p. 5). Applicant testified counsel informed her that calling character witnesses would open the door to her character during trial. (PCR Tr. p. 6). Applicant testified the coroner was not called as a witness during trial. (PCR Tr. p. 7). Applicant testified she spoke with the coroner alone in the hospital room following her child's death. (PCR Tr. p. 7). Applicant explained to the coroner the story of her daughter falling at the store the day before her death. (PCR Tr. p. 8). Applicant testified she made a statement to Detective Creech, who later accused her of never mentioning the fall in any statements. (PCR Tr. p. 8).

Counsel Theo Williams testified they discussed the possibility of calling character witnesses. (PCR Tr. p. 34). Counsel testified there was absolutely no reason to call character witnesses, because it opens the door to her character. (PCR Tr. p. 34). Counsel believed the State did not call the coroner as a witness because she initially ruled the death accidental. (PCR Tr. p. 38). However, counsel testified coroners typically rule deaths accidental until certain determinations are made, such as bruising or use of blunt instruments. (PCR Tr. p. 38). Although the coroner initially ruled the death accidental, counsel believed she would have ultimately testified the death was a homicide. (PCR Tr. p. 39). Counsel testified the coroner would have been able to easily explain why she initially ruled the death an accident. (PCR Tr. p. 39).

2. Discussion

Applicant alleges counsel was ineffective for failing to call character witnesses and the coroner. This allegation is without merit. 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 [her] case." *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing *Strickland*). "[W]hen Counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel."

Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010).

This Court finds counsel discussed the possibility of calling character witnesses with Applicant. Counsel reasonably informed Applicant that opening the door to character at trial would not be beneficial to her defense. Furthermore, this Court finds counsel did not believe the coroner's testimony would have been beneficial to the defense as he believed the coroner would have ultimately testified the death was a homicide. Counsel clearly articulated a reasonable trial strategy for not calling character witnesses and the coroner at trial; thus, counsel was not deficient for failing to call these witnesses.

Furthermore, Applicant failed to offer the testimony of any potential character witnesses or the coroner during the PCR hearing. Our courts have "repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial." *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998). Because Applicant has failed to present testimony of any favorable character witnesses or the coroner during the PCR hearing, or credible evidence of the potential testimony, she has failed to meet her burden establishing prejudice in this regard.

Accordingly, this Court finds Applicant's allegation counsel was ineffective for failing to call character witnesses and the coroner during trial is **DENIED**.

Failure to Develop a Trial Strategy²

Applicant next contends Counsel was ineffective for failing to adequately develop a trial strategy, specifically for failing to present a defense that Richard Tuckus (victim's father) was the last adult in the room with the victim before she died. This Court disagrees and finds the record

² Allegations 2 and 5 will be addressed in this section.

Counsel's credible testimony refutes this allegation.

1. PCR Testimony

Applicant testified counsel should have devised a defense strategy. (PCR Tr. p. 7). Applicant testified she wanted evidence presented at trial that Richard Tuckus was the last adult in the room when victim was killed. (PCR Tr. p. 12). Applicant testified she was in the other room when victim died and Richard was the last one in the house before Applicant found victim dead. (PCR Tr. p. 13).

On cross-examination, Applicant testified she gave multiple statements to law enforcement in which she never mentioned the possibility Richard may have been the perpetrator. (PCR Tr. p. 24). Applicant explained that she did not do so "because at that time, it had never crossed [her] mind." (PCR Tr. p. 24). Applicant testified that Richard had left the house around noon and did not come back that day. (PCR Tr. p. 15). Applicant testified she ran to Richard's house after finding victim deceased. (PCR Tr. p. 15). Applicant testified the first time she brought up the possibility Richard may have killed victim was during her trial. (PCR Tr. p. 24).

On re-direct, Applicant testified counsel did not adequately address this defense during trial and did not adequately address the discrepancies in her statements based on the questions law enforcement asked. (PCR Tr. p. 28).

Counsel Williams testified he met with Applicant several times before trial. (PCR Tr. p. 31). Counsel testified he went over all the discovery and State's evidence in this case. (PCR Tr. p. 31). Counsel testified he thoroughly explained every stage of the trial with Applicant. Counsel testified he developed a strategy that someone else may have committed the homicide, including Richard Tuckus. (PCR Tr. pp. 31 – 32). Counsel testified Applicant's inconsistent statements were the biggest weakness for the defense. Counsel explained he filed a motion to suppress the

statements and a *Jackson v. Denno*³ hearing was held prior to trial. (PCR Tr. p. 34). Counsel testified he insinuated that Richard Tuckus may have been involved in the victim's death. (PCR Tr. p. 42). Counsel testified he intended on presenting evidence that another child of Richard Tuckus had also died; however, the State filed a pre-trial motion in limine and the evidence was excluded. (PCR Tr. p. 33).

Counsel reiterated that his trial strategy was to argue someone else committed the homicide. (PCR Tr. p. 43). Counsel explained his goal during his cross-examination of Richard Tuckus was to underscore his tumultuous relationships with women and to insinuate that Richard Tuckus was the only one who had anything to gain from the victim's death since he no longer had to pay child support. (PCR Tr. p. 42).

2. Discussion

This Court finds that Counsel developed a reasonable trial strategy in which he argued a third party committed the homicide. As part of that strategy, through testimony and in closing argument, counsel insinuated Richard Tuckus may have been the perpetrator. (R. p. 730). On cross-examination, counsel elicited testimony from Richard Tuckus that he failed to pay any child support for victim. (R. 290). As counsel credibly testified, this was meant to support a potential motive for killing the victim. Furthermore, counsel presented evidence that Richard Tuckus had a key to Applicant's trailer, demonstrating he could access it at any time. (R. p. 160; R. pp. 294 – 295).

Furthermore, it is clear from the trial transcript that counsel's strategy was also to argue the shoddiness of the investigation and the failure of the State to meet its burden of proof at trial. Counsel argued law enforcement failed to record any statements Applicant made during the

³ *Jackson v. Denno*, 378 U.S. 368, 84 S.Ct. 1774, 12 L.Ed.2d 908 (1964).

investigation, failed to properly secure the crime scene and failed to properly collect evidence at the crime scene. (R. p. 722; R. p. 727). Counsel argued there were several witnesses the State failed to call, including the coroner and the minor son of Applicant who was present during the death of the victim. (R. p. 723). Counsel further argued Applicant's children were well-looked after and there was no evidence of any prior child abuse. (R. pp. 724 – 725). In light of the State's evidence in this case, this Court finds counsel clearly developed a reasonable trial strategy and argued it commendably.

Applicant alleged counsel did not adequately address the discrepancies in her statement as part of his trial strategy. This allegation is without merit. Counsel filed a motion to suppress the statements; however, the statements were ruled free and voluntary by the trial court following a *Jackson v. Denno* hearing. (R. pp. 63 – 123). Furthermore, counsel argued against the validity of the statements during cross-examination of witnesses and in closing argument. This Court finds counsel was not ineffective in failing to address the discrepancies of Applicant's statement.

Applicant further alleges counsel should have argued Richard Tuckus was the last adult in the room with the victim; however, the evidence presented at trial, Applicant's statements to law enforcement and Applicant's own testimony at the PCR hearing refute this assertion. Included in the evidence presented at trial were at least two statements Applicant made to law enforcement in the days following the homicide; in none of these statements did Applicant assert Richard Tuckus was with the victim when she died. In Applicant's first statement, she places the blame on her two other children who were present during the death of the victim. (R. pp. 70 – 75). Applicant admitted in her statement no other adults had access to victim that day, and Richard Tuckus had not seen the victim. (R. p. 76).

The evidence presented at trial showed that Richard Tuckus left the house around 1 p.m.

the day of his daughter's death and did not return. (R. p. 148; R. pp. 273 – 274; R. p. 308). The time of death of the victim was hours after 1 pm. (R. p. 494). Furthermore, during cross examination at the PCR hearing, Applicant testified Richard Tuckus left the house at noon that day and did not come back; thus, by her own admission, Richard Tuckus was not the last adult in the room with the victim before she died. (PCR Tr. p. 15).

For these reasons, this Court finds counsel was not deficient in developing a trial strategy. Accordingly, this Court finds Applicant's allegation counsel was ineffective for not admitting co-defendant's statement at trial is **DENIED**.

Failure to Effectively Cross Examine Witnesses

Applicant contends counsel was ineffective for failing to effectively cross examine witnesses. This Court finds this allegation is without merit.

1. PCR Testimony

Applicant testified counsel did not adequately cross examine witnesses who were lying on the stand. (PCR Tr. p. 7). Applicant testified that during trial there were lies told on the stand, she would point them out to counsel, and he would not bring them up on cross-examination. (PCR Tr. p. 7).

Counsel testified if he perceived a witness lying about something that damaged Applicant's defense, he certainly would have impeached them on it. (PCR Tr. p. 35). Counsel testified that during cross-examination of Detective Creech he attacked the process in which law enforcement took Applicant's statements, specifically the lack of any recording of the statements. (PCR Tr. p. 34). Counsel explained he attacked the State's theory of the case during cross examination of the expert witnesses. (PCR Tr. p. 32).

As discussed in the previous section, counsel testified he cross-examined Richard Tuckus

regarding his failure to pay child support. (PCR Tr. p. 42). Furthermore, counsel attempted to open the door regarding the death of another child of Richard Tuckus; however, the State filed a pre-trial motion in limine to exclude any mention of Richard's other deceased child, which was granted by the trial court. (PCR Tr. p. 32). Counsel testified he did not specifically cross-examine Richard Tuckus about a change in his statement because "whether [Richard Tuckus] was asleep or awake and whether he changed his testimony, just on that point, I don't know would be significant." (PCR Tr. p. 48).

2. Discussion

This Court finds Applicant has not met her burden of proving counsel's performance in cross-examining witnesses was deficient. This Court finds Counsel would have impeached any witness who lied about something that damaged Applicant's defense if he had a method of proving the testimony to be false. Counsel explained he thoroughly cross-examined the expert witnesses regarding the cause of death of the victim. Counsel cross-examined Richard Tuckus regarding his failure to pay child support in an attempt to make that an issue in this case. (R. p. 288). Additionally, counsel elicited testimony that Richard Tuckus was in possession of a key to Applicant's trailer. (R. p. 294). Counsel would have addressed the death of Richard Tuckus's other child; however, he could not because the trial court excluded any mention of it in a pretrial motions hearing. (R. pp. 126 – 134). This Court finds counsel's credible testimony and the record from Applicant's trial transcript demonstrates counsel was not deficient in cross-examining the witnesses.

Furthermore, Applicant has not met her burden establishing prejudice by counsel's alleged failure to effectively cross-examine witnesses. Applicant failed to testify as to which witnesses counsel allegedly failed to cross-examine and what they were allegedly lying about. Applicant has

counsel allegedly failed to cross-examine and what they were allegedly lying about. Applicant has presented no evidence or testimony of how more effective cross-examinations would have resulted in a different outcome at trial.

Accordingly, this allegation is **DENIED**.

Failure to Address Claimed Conflict of Interest Between Detective Barr and Applicant

Applicant next contends Counsel was ineffective for failing to address a conflict of interest between Detective Traci Barr and Applicant. This Court finds this allegation is without merit.

1. PCR Testimony

Applicant testified she has known Detective Barr since she was a child. (PCR Tr. p. 8). Applicant testified they were like family; she would come to Applicant's soccer games and birthday parties growing up. (PCR Tr. p. 8). Applicant testified that Detective Barr's first solo case as a detective involved her father and she became like a part of their family through that case. (PCR Tr. p. 9).

Counsel Willimas testified he was only aware that Applicant knew Detective Barr. Counsel testified he did not see that as a problem. (PCR Tr. p. 36). Counsel spoke with Detective Barr prior to her testimony and Counsel was not concerned her testimony would harm Applicant outside of her saying what happened. (PCR Tr. p. 36). Counsel testified Applicant never indicated Detective Barr told her to change words in her statement; Applicant never denied she said any of her statements. (PCR Tr. p. 37; p. 43).

2. Discussion

This Court finds Counsel was not deficient in failing to address a claimed conflict of interest between Detective Barr and Applicant. Although Counsel was aware Detective Barr and Applicant knew each other, he did not believe this was a problem. Applicant never denied anything in her

prior to trial. Counsel was not concerned any claimed conflict of interest between Applicant and Detective Barr would be harmful to Applicant's defense. This Court finds Counsel articulated a valid reason for not addressing a claimed conflict of interest between Applicant and Detective Barr; thus, was not deficient in this regard. Furthermore, Applicant has failed to present any evidence or testimony that her relationship with Detective Barr improperly affected Detective Barr's duties as an investigator or her testimony at trial. If anything, the parties' previous close relationship would have made Detective Barr *more* sympathetic to Defendant. Thus, this Court finds Applicant has failed to meet her burden establishing prejudice.

Accordingly, this allegation is **DENIED**.

CONCLUSION

Based on the foregoing, this Court finds Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. This Court finds Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's representation. Therefore, the allegations of ineffective assistance of counsel are denied and dismissed 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), SCRCP, 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 application with respect to all other allegations for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 1st day of November, 2023.

Kristi Curtis

THE HONORABLE KRISTI F. CURTIS
Presiding Judge
Eleventh Judicial Circuit

Sumter, South Carolina