

STATE OF SOUTH CAROLINA
In The Supreme Court

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Dec 29 2023

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable R. Scott Sprouse, Circuit Court Judge

Case No. 2019-CP-36-00064

Kenny O. Ruff, #264816,Petitioner,

v.

State of South Carolina,Respondent.

NOTICE OF APPEAL

Applicant, Kenny O. Ruff, appeals the order of the Honorable R. Scott Sprouse, filed on December 13, 2023.



December 29, 2023

ASHLEY A. MCMAHAN, ESQUIRE

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term, the Newberry County Grand Jury indicted Applicant for murder (2015-GS-36-0594), armed robbery (2015-GS-36-0595), and possession of a firearm during the commission of a violent crime (2015-GS-36-0596). Assistant Public Defender Charles V. Verner represented Applicant at trial. Solicitor David M. Stumbo and Assistant Solicitor Taylor W. Daniel of the Eighth Circuit Solicitor's Office prosecuted the case. On January 9, 2017, Applicant proceeded to trial before the Honorable Donald B. Hocker. The jury found Applicant guilty on all three counts. Judge Hocker sentenced Applicant to imprisonment for life without parole.

Subsequently, Applicant filed a timely notice of appeal. Chief Appellate Defender Robert M. Dudek of the Office of Appellate Defense perfected the appeal pursuant to *Anders v. California*, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal. The Remittitur was sent on July 13, 2018.

Factual Summary

This case arises out of a murder and armed robbery that occurred at Leslie's Salon in Newberry on August 26th, 2015. The salon was owned by Robert Facio Ledesma ("Victim") and his wife. Surveillance cameras at Kunkle Oil, which was located near Leslie's salon, captured Applicant walking into Leslie's and leaving at 1:41 p.m. (R. pp. 207, 225, 227, 265, 279, 283, 287-289, 478-479, 498). In the video, Applicant is seen walking out of Leslie's with a white bag in his hands. (R. pp. 267, 385-387, 498). Victim's niece, Elitania Martinez, was going to bring her uncle lunch that day like she normally did on Wednesdays, but she was running late and arrived at Leslie's at 1:55 p.m. (R. pp. 182-183). Once she got there, she testified at trial that she walked through the salon and couldn't find her uncle. (R. p. 183). She then continued to search the salon and found him on the floor face down with blood coming from his head. (R. p. 183). She called 911, and police were dispatched and arrived at 2:02 p.m. (R. pp. 183, 187, 219, 302-303). Police

discovered Victim was unresponsive, and he was declared dead at the scene from a bullet wound to the back of his head. (R. pp. 188, 196, 248). The police conducted a search and found that the register drawers were open and contained no money except for some change. (R. pp. 192, 480-481). Blood located on the wall near Victim's body indicated that Victim was at a low position at the time he was shot. (R. p. 248). Leslie's salon had video camera surveillance, but the hard drive with the recordings was missing. (R. pp. 198, 246).

After investigating the scene, the police then tried to follow the trail that they believed the suspect took along Pike Circle. (R. pp. 203-205). They proceeded down the path and found a faceplate that belonged to the hard drive of the video cameras at Leslie's. (R. pp. 203-205, 382, 384). As they continued to walk, they ended up in Heritage Square where they noticed a security camera facing a dumpster. (R. pp. 211, 384-385). That camera recorded the Applicant there with a white bag at 1:46 p.m. (R. pp. 208, 385, 389, 649). After obtaining a search warrant, police searched through the dumpster and located a white bag that contained a landline phone that was taken from Leslie's and an iPad that belonged to the victim. (R. pp. 209-211, 390-394). Also in the bag was a black shirt that contained the Applicant's DNA on it and gunshot residue along the smashed hard drive that belonged to Leslie's video surveillance cameras. (R. pp. 209-211, 227, 390-393, 568, 582, 594, 603). A white cord that seemed to belong to the landline phone was located on the trail. (R. pp. 394-395). The hard drive was so badly smashed that the police were worried nothing could be recovered, but they proceeded to send the hard drive to the FBI, who were able to rebuild the system and recover the video from inside the salon. (R. pp. 393, 702-704). In that video, the suspect can be seen walking from Kunkle's Oil to the salon, wearing a black do-rag, black shirt, shoes with white stripes, and jeans with a lanyard hanging out of his left hip pocket and a cloth protruding from his right pocket. (R. pp. 509-513, 648, 704-708). The video depicts

the suspect entering the salon with a pistol and aiming it at Victim. (R. p. 510). The suspect can be seen marching the victim into the back and ordering him to unplug the hard drive for the cameras, at which point the video goes black. (R. pp. 509-511, 704-708, 715). The suspect's clothing in the salon video was consistent with the clothing Applicant was wearing in the Kunkle Oil video and a video from the Brothers BP station taken around 1:32 p.m. (R. pp. 512-513, 708-712).

At trial, Investigator Richard Mercer testified that he collected videos from other stores near Leslie's and was able to positively identify Applicant in the videos because he had known him for years prior to the crime. (R. pp. 270-271). He also stated that he noticed Applicant changed his clothes multiple times throughout the different videos, but that he had a do-rag on his head. (R. pp. 263, 270, 272, 282, 297, 522, 525-527). Walter Bentley testified at trial that he located two pictures on Applicant's Facebook showing Applicant wearing a wave cap or do-rag. (R. p. 663). Mercer further testified that he conducted a search of Applicant's home and found a small caliber shell casing, not an actual bullet, but a bullet that had been fired. (R. pp. 470-474). It was identified as a .22 caliber shell casing. (R. p. 473).

Emmanuel Richardson, nicknamed "Womp", testified at trial that he lives on Turner Street, the same street as Applicant, and that he's known him ever since he was born. (R. pp. 304-305). Richardson stated that he saw Applicant going into Leslie's salon on the day the crime occurred. (R. p. 307). On direct-examination, Richardson was asked what Applicant was wearing when he walking into the store, and he said, "he had a black shirt and a do-rag on his head. (R. p. 309, II. 12-13). The Solicitor then asked him to identify the person he knows as Kenny Ruff, and Richardson identified Applicant. (R. pp. 311-312).

The only other person in the Kunkle Oil surveillance video who can be seen entering

Leslie's after Applicant leaves, apart from Victim's niece who ultimately discovered the body, was identified as Jose Galvez. (R. pp. 328-334, 498). He recalled August 26th and stated that he left his job to get a haircut at Leslie's. (R. pp. 328-329). He went into the store but saw nobody inside, so he went to La Princesa nearby to buy cards for his family before returning to Leslie's. (R. pp. 328-329). However, no one responded or came to him, so he left. (R. p. 333). A gunshot residue test was conducted on Galvez at 4:55 p.m. on the day of the murder, but no gunshot residue was found. (R. pp. 401-404, p. 563).

Later that same day, the police apprehended Applicant. (R. pp. 273-278). Applicant was then interviewed by Captain Goodman, and he admitted to being in Leslie's Salon but said he just wanted to check the place out. (R. pp. 485-489). Applicant also indicated that he had changed his clothes the day of the crime. (R. pp. 489, 491). Once he was in jail, he called his sister, and those conversations were recorded. (R. p. 423). Applicant's sister, Angela Ruff, testified at trial but initially didn't want to answer questions because she didn't want to be involved. (R. pp. 426, 435-436). However, Angela Ruff did confirm it was her voice and her brother, Kenny's on the tape. (R. pp. 426, 435-436). On the tape, Applicant said he was in Leslie's on the 26th and that he was with Dale Bailey and Machiavelli. (R. pp. 431-432, 497). Applicant also said that Dale "snatched" the footage. (R. pp. 437-438). On direct examination, Angela admitted that she was able to look at the videos and see that it was Applicant. (R. p. 439, ll. 6-10). Angela also said Applicant wears do-rags from time to time and that he indicated to her that Dale shot the man. (R. pp. 439-441). Following hearing this story, Captain Goodman looked at the videos again but did not see three men entering the salon as Applicant indicated. (R. pp. 507-508).

Aaryon Dowdy, an inmate at Alvin S. Glenn, who was in the Special Housing Unit with Applicant, also testified at trial. (R. p. 441). Dowdy explained that a mic, similar to an intercom

system, is on the wall in the rooms and that it's always on. (R. pp. 443, 454-456). He testified that he used this to communicate with Applicant while at the detention center. (R. pp. 444-445). While speaking to him, Applicant told Dowdy his side of the story. (R. p. 446). Dowdy testified that,

He told me that he entered a hair salon, to, with intentions to rob. And he told me that he took a Spanish guy in the back and the guy was begging for his life. He shot him in the side of his head. He told me that when the police arrived, that he, the guy was blue in the face. He said that the police didn't know how he died until the autopsy because the caliber of the gun, because his hole had closed up on him. He also stated that he left the salon with a white bag. He also told me that took at least \$1,200.00 and a black monitor.

(R. p. 446, ll. 7-16). Applicant also told Dowdy he used a .22 revolver and that after the shooting, he went to BP and Wal-mart. (R. pp. 446-447). Police confirmed Applicant went to Wal-Mart that afternoon through a receipt that was found in his home, surveillance cameras, and Applicant's own statement to police. (R. pp. 174, 284, 468, 514-516, 520, 524). Video surveillance in BP also confirmed he went there after the shooting. (R. pp. 520-521). Dowdy further testified that Applicant said he went to the mall to change clothes and that he gave the weapon to his nephew after the murder. (R. pp. 448-449). Following the investigation, Applicant was charged with murder, armed robbery and possession of a firearm during the commission of a violent crime.

Present Application

On February 11, 2019, Applicant filed his initial PCR application, raising numerous allegations, which the Court interprets as follows:

1. Ineffective Assistance of Counsel
 - a. Failure to permit Applicant to attend Applicant's preliminary hearing
 - b. Failure to investigate / prepare for trial
 - i. Failure to obtain private investigator
 - ii. Failure to investigate into incident where Applicant's "rule five" items were stolen by another inmate
 - iii. Failure to adequately communicate and visit client
 - iv. Failure to subpoena witnesses
 - c. Failure to prevent DNA evidence from being introduced the week of Applicant's trial

- d. Failure to object to jurors falling asleep during Applicant's trial
 - e. Failure to prevent mother of a Newberry County Detention Center corrections officer from serving on the jury
2. Prosecutorial Misconduct
 - a. Prosecutor utilized a witness to obtain information from Applicant's family

On November 27, 2022, Applicant amended his application to include the following allegations of ineffective assistance of counsel:

1. "Failure to disclose plea offer to Applicant."
2. "Failure to strike Dorothy Gladney as alternate after she stated Teresa Sanders was related to her family. See ROA Vol. I, page 81, lines 16-24; ROA Vol. I, page 96, lines 1-5."
3. "Did not adequately meet with Applicant prior to trial. Applicant tried to fire trial counsel but could not get the motion in front of a judge. Did not get opportunity to talk to Mr. Verner until almost 5 months after arrest."
4. "Did not move for a new trial after the judge admonished several jurors for falling asleep. ROA Vol. II, page 583, line 8 – page 584, line 2."

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, and weighed the testimony accordingly. Before the Court are Applicant's records from the South Carolina Department of Corrections, the transcript of Applicant's trial, the records of the Newberry County Clerk of Court regarding the subject convictions, Applicant's appellate records, and the original and amended applications for post-conviction relief. This Court has reviewed the records submitted to it by the parties, the legal arguments made by the attorneys, and the pleadings. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented:

Ineffective Assistance of Trial Counsel

Applicant's allegations of ineffective assistance of trial counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must prove his factual allegations by a

preponderance of the evidence. 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 686; *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. A reasonable probability is "a probability sufficient to undermine confidence in the outcome." *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 prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury." *United States v. Basham*, 789 F.3d 358, 371–72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

As an initial matter, the Court notes the strength of the State's case against Applicant. Applicant was caught on video pointing a gun at Victim and marching him into a back room of the salon, where the Victim's body was discovered a short time later. Multiple witnesses (including Applicant's own sister) identified Applicant as the suspect, either from personal familiarity or from his distinctive clothing that matched the clothing in other videos taken immediately before the crime at the Brothers BP station and the Kunkle Oil company. Another surveillance video shows Applicant hiding a white bag in a dumpster shortly after the crime; inside the bag, police discovered a shirt with Applicant's DNA and gunshot residue on it as well as multiple items stolen from Leslie's salon, including the hard drive containing the video of the robbery. In a recorded phone call to his sister, Applicant admitted he was present at Victim's killing; Applicant blamed

the robbery and murder on a "Dale Bailey" even though the videos show Applicant entering the store alone. The totality of the evidence before the jury was extremely damning.

In some cases, overwhelming evidence of guilt will preclude a finding of prejudice. "A reasonable probability of a different result does not exist when there is overwhelming evidence of guilt." *Hillerby v. State*, 431 S.C. 323, 333, 847 S.E.2d 500, 505 (Ct. App. 2020) (citing *Geter v. State*, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991)). For evidence to be "overwhelming," such that it categorically precludes a finding of prejudice, the evidence must include something conclusive, such as a confession, DNA evidence demonstrating guilt, or a combination of physical and corroborating evidence so strong that the *Strickland* standard of "a reasonable probability . . . the factfinder would have had a reasonable doubt" cannot possibly be met. *Smalls v. State*, 422 S.C. 174, 191, 810 S.E.2d 836, 845 (2018).

The Court finds the evidence in this case meets the standard articulated in *Smalls*. Although the video does not show the moment Applicant murdered Victim, it shows Applicant leading Victim to the place where his body was ultimately found before the video was unplugged. Applicant even told his sister that he was present at the murder, and his attempt to deflect the blame onto a third party was conclusively refuted by the video evidence. Further evidence of Applicant's presence at the crime was the fact he hid items stolen from Victim inside a dumpster, along with a dark-colored shirt as seen in the video that had Applicant's DNA and gunshot residue on it. Weighed against this overwhelming evidence of guilt, the Court finds none of the alleged deficiencies of Counsel are "sufficient to undermine confidence in the outcome" of Applicant's trial. Therefore, the *Strickland* standard for proving prejudice cannot be met.

Because a showing of prejudice is required to succeed on an ineffective assistance claim, Applicant's failure to prove prejudice is dispositive of this PCR action, and there is no need to

evaluate the deficiency prong of the ineffective assistance analysis. *See Strickland*, 466 U.S. at 697 (“If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice . . . that course should be followed.”). Nevertheless, for the sake of completeness, the Court will address Applicant’s specific allegations of ineffectiveness:

Preliminary hearing

Applicant alleges Counsel did not arrange for him to have a preliminary hearing. However, Applicant failed to produce any evidence at the evidentiary hearing to substantiate this claim. In addition, there is no constitutionally protected right to a preliminary hearing in South Carolina. *State v. Keenan*, 278 S.C. 361, 296 S.E.2d 676 (1982). Additionally, a preliminary hearing is not held if the defendant is indicted by a grand jury or waives presentment before the preliminary hearing occurs. Rule 2(b) SCRCrimP. In this case, Applicant was indicted on all charges by the grand jury, so he had no right to a preliminary hearing. Therefore, Applicant has failed to prove either deficiency or prejudice as to this allegation.

Failure to investigate or prepare for trial

i. Failure to obtain private investigator

Applicant alleges Counsel failed to hire a private investigator, who could have investigated the time stamps of the various surveillance videos and shown that they did not match up. At the evidentiary hearing, however, Counsel credibly testified that he *did* employ an investigator in preparing for Applicant’s trial. Furthermore, the issue of the discrepancies between the time stamps of videos taken from different areas was thoroughly explored at trial. (R. pp. 624-649). Applicant failed to introduce any other evidence at the evidentiary hearing that purportedly would have been discovered by a more thorough investigation. Therefore, he has failed to meet his burden of proof. *See, e.g., Taylor v. State*, 258 S.C. 369, 378, 188 S.E.2d 850, 854 (1972) (holding

a PCR applicant's allegation that his trial counsel failed to adequately investigate his case was unsupported where the applicant failed to point out any beneficial evidence which could have been discovered by further investigation).

ii. Failure to investigate theft of discovery by fellow inmate

Applicant alleges his discovery materials were stolen while he was in pre-trial detention by a fellow inmate, Aaryon Dowdy, who then testified against him at trial. Applicant complains Counsel did not act upon this information. The trial transcript, however, reveals that Counsel argued Dowdy's account of Applicant's jailhouse confession was not credible *because* Dowdy had seen Applicant's discovery materials and used the details therein to fabricate a more convincing lie. (R. pp. 807-809). Moreover, Dowdy was thoroughly impeached as a criminal and jailhouse snitch hoping for leniency in exchange for his testimony against Applicant, and his testimony was largely cumulative to the other damning testimony mentioned above. The Court finds Applicant has failed to prove Counsel was deficient as to this allegation or that Applicant suffered any prejudice as a result.

iii. Failure to adequately communicate and visit Applicant

Applicant alleges that Counsel did not meet or communicate with him sufficiently. Counsel, however, credibly testified that he met with Applicant several times in the weeks leading up to the trial and went over the discovery with him thoroughly. Therefore, the Court finds Applicant has failed to prove Counsel was deficient in this regard. Additionally, to prove prejudice from failure to review discovery, a PCR applicant must present some new evidence or defenses that could have been discovered by counsel's further review of the discovery. *Harris v. State*, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)), *abrogated on other grounds by Smalls*, 422 S.C. 174, 810 S.E.2d 836.

Furthermore, an applicant must also show how the new evidence or defenses would have resulted in a different outcome. *Id.* (citing *David v. State*, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); *Skeen v. State*, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. *Id.*, 377 S.C. at 75, 659 S.E.2d at 145 (citing *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)). Here, Applicant did not present any new evidence or defenses that purportedly could have been discovered by additional meetings with Counsel or further review of the discovery. Accordingly, Applicant has not met his burden of proof as to this allegation.

iv. Failure to subpoena witnesses

Applicant alleges Counsel failed to subpoena witnesses, whose testimony he claims might have benefitted his case. However, Applicant did not present those witnesses or their testimony at the evidentiary hearing. Therefore, he has failed to meet his burden of proof. *See, e.g., Martin v. State*, 427 S.C. 450, 455, 832 S.E.2d 277, 279–80 (2019) (holding a PCR applicant who claims trial counsel was ineffective for failing to call certain witnesses must produce those witnesses or their testimony at the PCR hearing).

Failure to challenge DNA evidence

Applicant alleges Counsel failed to prevent the DNA evidence from being introduced. However, Applicant has not presented any grounds for the suppression of the DNA evidence. Because Applicant has failed to show that the DNA evidence was improperly admitted, he has not met his burden of proving that Counsel was ineffective as to this allegation.

Jurors falling asleep

Applicant alleges, in both his initial and amended applications, that Counsel was ineffective for failing to take corrective action after the trial court upbraided certain jurors for

“nodding off” during trial. (R. pp. 583-584). The transcript reveals, however, that the trial court itself thoroughly warned those jurors to be attentive. Furthermore, at the conclusion of the trial, the court commended the jurors for being “extremely attentive,” notwithstanding “some folks kind of being sleepy-headed” at one point. (R. p. 852-853). Applicant suggests Counsel should have moved for a new trial, but the Court finds such an extreme remedy would likely not have been granted on the basis of what, based on the transcript, appears to have been a relatively minor lapse of attentiveness on the part of a few jurors. In addition, Counsel credibly testified at the evidentiary hearing that jurors who appear bored or unhappy during the presentation of the State’s case tend to be favorable to the defense. For these reasons, the Court finds Applicant has failed to prove that Counsel was deficient or that he was prejudiced as to this allegation.

Failure to strike jurors

In his initial application, Applicant alleges one of the jurors in his case “was the mother of a corrections officer in the Newberry County Detention Center” and “was also a family issue.” However, he does not name the juror in question, and the transcript does not reveal any connection between any of the jurors and Newberry County correctional officers. In his amended application, Applicant alleges Counsel should have moved to strike Dorothy Gladden, who admitted that her husband’s second cousin was Teresa Sanders, Applicant’s mother. (R. p. 81, 859). Gladden admitted she was related to Teresa Sanders (who did not testify during the evidentiary phase of the trial), and she informed the trial court that she could be fair and impartial. In addition, Gladden was merely an alternate, and she was not among the jurors who actually returned the guilty verdict. (R. p. 851-852). The Court finds Applicant has failed to prove that he was prejudiced by the seating of an alternate juror who was distantly related to him and who assured the court that she

could serve fairly and impartially. There is no evidence whatsoever that the seating of Ms. Gladden had any prejudicial effect at all.

Failure to disclose plea offer

Applicant alleges Counsel failed to communicate an offer for Applicant to plead “straight up” to murder, rather than proceed to trial facing a mandatory life sentence. Applicant claims he would have accepted such a plea if he had been offered one. However, both Counsel and Solicitor Stumbo credibly testified that they had no recollection of any such plea offer being made. On the contrary, they testified consistently that the State gave notice that it was seeking a mandatory life sentence from the very beginning. Solicitor Stumbo even testified that he considered seeking the death penalty. The Court finds Applicant has failed to prove, by a preponderance of the evidence, that any such plea offer was ever made.

Applicant’s attempts to relieve Counsel

Applicant alleges that he attempted to fire Counsel prior to trial. There is no indication of any such attempt in the record, and Counsel credibly testified he had no recollection of it. The Court finds Applicant has failed to prove this allegation by a preponderance of the evidence. Furthermore, a criminal defendant does not have the right to appointed counsel of his choice.

[A] defendant who is to be represented by appointed counsel because of his or her lack of financial resources is not entitled to have a particular attorney, one in whom the defendant reposes special confidence, or one who shares his or her view as to the best trial strategy to be employed in the defendant’s case, appointed to represent him or her. . . . Nor can the defendant effectively choose different counsel by requesting that his or her appointed counsel be removed and replaced by another.

21A Am. Jur. 2d *Criminal Law* § 1078.

Prosecutorial Misconduct

Applicant alleges, in his initial application, that the prosecution sent one of the State’s witnesses to his family to collect information from them. No evidence was introduced at the

evidentiary hearing to substantiate this allegation. Therefore, the Court finds Applicant has failed to meet his burden of proof as to this claim.

III. CONCLUSION

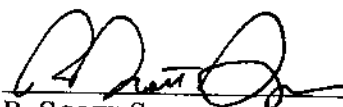
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. 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's attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief be denied and dismissed with prejudice; and
2. The Applicant be remanded to the custody of the South Carolina Department of Corrections.

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


R. SCOTT SPROUSE
Presiding Judge
Eighth Judicial Circuit

Anderson, South Carolina



ALAN WILSON
ATTORNEY GENERAL

December 11, 2023

The Honorable Elizabeth P. Folk
Newberry County Clerk of Court
Post Office Drawer 10
Newberry, SC 29108

FILED
NEWBERRY COUNTY
RECORDED 13
ELIZABETH P. FOLK
CLERK OF COURT

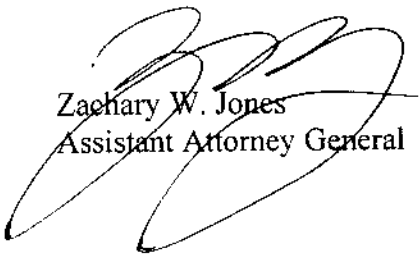
Re: Kenny O. Ruff, #264816 v. State of South Carolina
2019-CP-36-0064

Dear Ms. Folk,

Enclosed please find the original **Order of Dismissal** signed by the Honorable R. Scott Sprouse, in the above-captioned case, for filing in your office. In addition, please forward proof of service and a time stamped copy back to our office for our file.

If you have any questions regarding this matter, please let me know.

Sincerely,


Zachary W. Jones
Assistant Attorney General

ZWJ/zew
Enclosure

cc: Ashley A. McMahan, Esquire