

RECEIVED

JAN 12 2024

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

Wayne Hankinson, SCDC #373802,)
Applicant,)

Case No. 2021-CP-02-01270

v.)

ORDER OF DISMISSAL

State of South Carolina,)
Respondent.)

INTRODUCTION

The matter before this Court is an action for post-conviction relief (PCR) commenced by Wayne Hankinson ("Applicant") on June 17, 2021. On September 5, 2023, a hearing into the matter was convened before the Honorable Heath P. Taylor at the Aiken County Courthouse. Applicant was present and represented by Christopher R. Geel, Esquire. Assistant Attorney General T. Cruise Mitchell represented the State. During the hearing, testimony was taken from Applicant and C. David Hayes ("Counsel").

After hearing the testimony at the PCR hearing and upon full review of the record, this Court finds Applicant's allegations regarding ineffective assistance of counsel are without merit. For the reasons discussed below, this Court denies and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections. During its November 2016 term, the Aiken County Grand Jury indicted Applicant for assault with intent to commit criminal sexual conduct in the first degree (2016-GS-02-02362), kidnapping (2016-GS-02-02363), and possession of a weapon during the commission of a violent crime (2016-GS-02-

FILED January 4 20 24

Robert J. White 915
C.C.P. & G.S.

Charlea Griffing Bowbe
Deputy Clerk

02364). Applicant was represented by Second Circuit Public Defender C. David Hayes, Esquire. Assistant Solicitors Ashley A. Hammack and Samuel B. Grimes of the Second Circuit Solicitors Office prosecuted the case.

On August 29, 2017, Applicant proceeded to a jury trial before the Honorable Brooks P. Goldsmith, circuit court judge. During the trial, the jury heard testimony from the victim, Applicant, and several other witnesses who encountered the two following the attack at Applicant's home. Following the trial, the jury convicted Applicant as indicted of assault with intent to commit criminal sexual conduct in the first-degree and kidnapping, but acquitted him of possession of a weapon during the commission of a violent crime. Judge Goldsmith sentenced Applicant to twelve years of imprisonment for each offense, with the sentences to be served concurrently.

Applicant, through trial counsel, filed a motion for a new trial on September 8, 2017. By order filed December 15, 2017, Judge Goldsmith denied the motion for a new trial.

Applicant filed a timely notice of appeal and was represented on appeal by Chief Appellate Defender Robert M. Dudek of the South Carolina Commission on Indigent Defense-Office of Appellate Defense, who raised the following issues on appeal:

1. Whether the court erred by ruling appellant was not entitled to an instruction on self-defense where appellant testified the complainant attacked him with a knife before what appeared to be a consensual sexual encounter, appellant was defending himself against that armed attack by the complainant and not seeking to sexually assault her, since appellant's testimony was evidence he was acting in self-defense, and not trying to sexually assault or illegally confine the complainant against her will when she attacked him with a knife?
2. Whether the court erred by ruling appellant was not entitled to ten peremptory challenges pursuant to S.C. Code § 14-7-1110, where the statute lists "criminal sexual conduct" as one of the crimes for which a defendant is entitled to ten peremptory challenges, and appellant was indicted for assault with intent to commit criminal sexual conduct which contains the same punishment as the principal and the statute did not break out "criminal sexual conduct" into "different degrees"?

Following briefing, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences in an unpublished opinion. State v. Wayne Hankinson, Unpub. Op. No. 2020-UP-317 (Ct. App. filed November 25, 2020). The remittitur was issued on December 15, 2020.

FACTUAL SUMMARY

The victim was a 21-year-old female college student living in Augusta, GA. (Tr. p. 57). The victim and Applicant initially met in a library in downtown Augusta. (Tr. pp. 58-59). They spoke for approximately five minutes before exchanging phone numbers. (Tr. p. 60). The victim went to the movies that day and had planned to go downtown with friends later that night. (Tr. p. 61). However, those plans got cancelled and Applicant texted the victim. (Tr. p. 62). Applicant picked up the victim ostensibly to go to his cousin's house for a party. (Tr. p. 62). They stopped at a gas station where the victim began to feel apprehensive due to how far they had driven. (Tr. p. 64). Instead of going to the cousin's party, Applicant took the victim back to his house. (Tr. p. 64).

They went inside the house and watched a movie together while drinking beer and smoking marijuana. (Tr. p. 68). Eventually Applicant began making advances and rubbing on the victim's leg. (Tr. p. 71). The victim rejected Applicant's advances and Applicant went and sat on the other couch. (Tr. p. 71). Applicant then left the room and came back with a gun which he pointed at the victim. (Tr. p. 72). Applicant told the victim to get up and take off her clothes. (Tr. p. 72). The victim began crying and started offering her phone and jewelry to Applicant. (Tr. p. 73). Ultimately, the victim took off her shirt and threw it on the couch. (Tr. p. 75). The victim then reached for her phone and Applicant lunged at her, grabbed her and began dragging her towards the bedroom. (Tr. p. 77).

The victim resisted and eventually fell into a pile of boxes that was in another room. (Tr. p. 79). The victim grabbed a knife that was sitting atop a speaker and attempted to stab Applicant,

but missed. (Tr. p. 80). Applicant grabbed the knife by the blade, cutting himself. (Tr. p. 80). Applicant told the victim to grab her stuff and he will take her home. (Tr. p. 81). Applicant then ran out the front door, without her shirt on, and approached David Blanken who was walking down the street. (Tr. p. 83). The victim was hysterical and screaming for help. (Tr. p. 115). Applicant then pulled up in his truck threatening Mr. Blanken telling him to mind his own business. (Tr. p. 116). Applicant eventually drove off and Mr. Blanken took the victim to his friend's house. (Tr. p. 117). Law enforcement arrived shortly thereafter. (Tr. p. 118).

CURRENT APPLICATION

Applicant timely commenced this PCR application on June 17, 2021. In his application Applicant alleged he was entitled to relief based on the following grounds:

- (a) "Trial counsel was constitutionally ineffective when he failed to object, or move to excuse for cause, or move to strike a juror who was a personal friend of the State's investigator, and this jury was seated on the jury at trial.
 - (i) "A juror who was seated in this case was a personal friend of an Investigator Norwood Bodie of the 2nd Circuit Solicitor's Office. Trial counsel failed to object to this juror being seated, and failed to adequately preserve Applicant's right to challenge this issue on appeal."
- (b) "Trial counsel was constitutionally ineffective when he failed to call a critical defense witness at trial, and present critical evidence of post-incident contact between the Applicant and the alleged victim."
 - (i) After the date of the alleged incident in this case. Applicant spent several days with his girlfriend. She was available to testify that the alleged victim repeatedly attempted to contact Applicant during this time period. Furthermore. Applicant provided his attorney with phone records documenting these contacts. Trial counsel failed to call the witness or present this evidence at trial.
- (c) "Trial counsel was constitutionally ineffective when he failed to object to the alleged victim's written statement being admitted as evidence in Applicant's trial."
 - (i) "The alleged victim gave a written statement to police who investigated this incident. The written statement was tendered as an exhibit in this trial, without an objection from defense counsel."

On November 22, 2022, Applicant filed an amended application raising the following additional claims of ineffective assistance of counsel:

1. "Failure to properly raise and argue Applicant's Motion for New Trial (based on juror being a personal friend of the State's investigator who sat at counsel's table). Trial counsel moved for a new trial after learning this information, but failed to request a hearing, failed to argue that Applicant was prejudiced by this juror's relationship with the State's investigator, failed to argue that the juror should have been disqualified, and failed to specify whether the State previously disclosed the name of the investigator.
2. "Failure to impeach the alleged victim with inconsistencies in her in-court testimony, as well as inconsistencies with prior statements given to law enforcement. Instead, trial counsel improperly introduced a copy of the victim's prior statements as an exhibit."
3. "Failure to adequately investigate the case and prepare for trial, to the extent that trial counsel—
 - a. "Failed to obtain and present evidence/photographs of the knife found in Applicant's truck;"
 - b. "Failed to interview potential witness Mykayla Prunell, who was with Applicant in the days that followed the alleged incident."
 - c. "Failed to call witness Mykayla Prunell to testify as a defense witness."
 - d. "Failed to introduce call logs that proved that the alleged victim continued to have contact with Applicant after the alleged incident."
 - e. "Failed to argue that the wound on Applicant's hand contradicted the alleged victim's version of events."
 - f. "Failed to argue that the photographs of the alleged crime scene contradicted the alleged victim's version of events."

During the hearing, Applicant only proceeded on the allegations raised in his amended application.

INEFFECTIVE ASSISTANCE OF COUNSEL, GENERALLY

In a PCR action, Applicant bears the burden of proving the allegations in his application by a preponderance of the evidence. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985); Rule 71.1(e), SCRCP. 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 Properly Raise and Argue Applicant's Motion for a New Trial

Applicant contends counsel was ineffective for failing to properly raise and argue Applicant's motion for a new trial. Specifically, Applicant alleges Counsel moved for a new trial after learning this information, but failed to request a hearing, failed to argue that Applicant was prejudiced by this juror's relationship with the State's investigator, failed to argue that the juror should have been disqualified, and failed to specify whether the State previously disclosed the name of the investigator. This Court disagrees and finds counsel was not ineffective in this regard.

1. PCR Testimony

Applicant testified Counsel moved for a new trial because one of the jurors knew the State's investigator. Applicant testified Counsel argued in his written motion that the juror was not

impartial because the juror had a relationship with the State's investigator which was not discovered by the defense until after sentencing. Applicant testified the motion was not filed properly because Counsel failed to argue prejudice.

Counsel testified he routinely asks members of the jury about a case after trial. While talking with the jurors, Counsel overheard the foreman talking to the investigator about their children hanging out together. Counsel testified he immediately went back in the courtroom and moved for a new trial.

On cross examination, Counsel testified he did not recall a written motion for a new trial or an order denying the motion. Counsel testified he did not write a brief along with the motion; however, he did move for a new trial immediately and argued it in the courtroom following sentencing. Counsel testified he argued he was unable to question the jury during *voire dire* regarding any potential relationship a member of the venire had with the investigator because the investigator was not in the room at the time. Counsel testified he would have liked an opportunity to use a remaining strike on this juror due to the juror's relationship with the State's investigator. Counsel testified he argued this in front of the court and received a ruling denying the motion. Counsel explained he filed a notice of appeal afterwards.

2. Discussion

Applicant alleges counsel was ineffective for failing to properly raise and argue Applicant's motion for a new trial. This allegation is without merit. This Court finds counsel properly raised and argued a motion for a new trial, both in court and in a written motion, which was denied by the trial court. Counsel argued, at length, that Applicant should be granted a new trial based on a juror member's undisclosed relationship with the State's investigator. (Tr. pp. 275–280). Counsel further argued he would have used one of his remaining strikes to strike this juror

had he been aware of the relationship. (Tr. p. 279). This motion was denied by the trial court. (Tr. p. 280). Moreover, the record reflects Counsel was not aware of this information until after trial when he spoke to the jury, and, accordingly, Counsel had no earlier opportunity to make this motion. This Court finds Counsel made a timely post-trial motion; thus, preserving the issue for appellate review. Counsel need not have requested another hearing on this matter since the issue had been ruled upon by the trial court following arguments from both Counsel and the Solicitor. Therefore, this Court finds Applicant has failed to prove Counsel was deficient as to this allegation.

Furthermore, as the solicitor argued during the post-trial motions hearing, the State's investigator was not a witness, not present for jury selection, and was not involved with the State's case other than presenting pictures and operating the video system. (Tr. p. 277). Moreover, the trial court asked the jury pool if they knew of any reason why they cannot be fair and impartial in this case and the juror in question did not give an affirmative response. (Tr. p. 30). Therefore, Applicant has failed to prove he was prejudiced by any alleged deficiency.

Accordingly, this Court finds Applicant's allegation counsel was ineffective for failing to properly raise and argue Applicant's Motion for a New Trial is **DENIED**.

Failure to Impeach Alleged Victim

Applicant next contends Counsel was ineffective for failing to impeach the alleged victim with inconsistencies in her in-court testimony, as well as inconsistencies with prior statements given to law enforcement. This Court disagrees, and finds the record from Applicant's trial and the credible testimony of Counsel refutes this allegation.

1. PCR Testimony

Applicant testified Counsel should have challenged the victim's version of events. Applicant testified he believed Counsel's questions on cross-examination of the victim were

inadequate. Counsel testified he impeached the victim on multiple lies during cross-examination. Counsel testified he even admitted into evidence a wikipedia article regarding a movie the victim allegedly watched that same day that had not come out yet. Counsel further explained he used her contradictory statements in his closing argument.

On cross-examination, Counsel testified he did not recall whether he impeached the victim on whether she mentioned to law enforcement in her prior statement that she fell into Applicant's boxes during their altercation. Counsel further testified he did not recall whether he cross-examined the victim regarding her testimony that she lunged for the knife and grabbed the knife by the blade. Counsel testified he crossed her on multiple discrepancies and does not remember the ones he focused on.

2. Discussion

This Court finds this allegation is without merit. During Applicant's trial, Counsel vigorously cross-examined the victim on her inconsistencies with her prior statement. Counsel specifically pointed out various statements made during her in-court testimony that she did not include in her prior statement to law enforcement. The victim testified that, after Applicant picked her up, he told her they were going to his cousin's house for a party. (Tr. p. 62). The victim testified she began to notice red flags when Applicant stopped at a gas station to pick up beer. (Tr. p. 64). The victim further testified that her and Applicant went outside of his house to look at his dogs. (Tr. p. 69). The victim also testified that, after running out of Applicant's house and approaching a witness on the street, Applicant pulled up in his vehicle and told the witness to not get involved. (Tr. p. 84). Counsel cross-examined the victim on each of these statements and was able to elicit testimony that she mentioned none of these events in her prior statement to law enforcement. (Tr. pp. 105-108). Furthermore, Counsel directly impeached the victim by admitting into evidence a

Wikipedia article on the movie the victim testified she saw in theaters earlier that afternoon. (Tr. p. 110). The Wikipedia article indicated the movie was not released until over a year after this incident occurred. (Tr. p. 110).

The transcript of the trial reflects that Counsel thoroughly attacked the victim's credibility by cross-examination and impeachment with her prior statement. This Court finds Counsel impeached the victim on multiple points with her prior statement and was even able to introduce a Wikipedia article which further impeached her testimony. During the evidentiary hearing, Counsel credibly testified to all these points of impeachment. This Court finds Applicant has failed to meet his burden showing Counsel was deficient as to this allegation.

Applicant asserts that Counsel did not cross-examine the victim on every inconsistency, including her testimony that she fell into Applicant's boxes and grabbed Applicant's knife by the blade. However, this Court finds this testimony would have been merely cumulative to the other inconsistencies Counsel impeached the victim with. Applicant testified at his trial presenting his version of events that contradicted the victims. Moreover, the State presented testimony from a witness that saw the victim immediately after the assault. The eyewitness testified the victim was hysterical and screaming for help without a shirt on. (Tr. p. 115-119). The witness further testified that Applicant was threatening the victim and told the witness to mind his own business. (Tr. p. 116). After hearing the testimony from all the witnesses, including the victim and Applicant, the jury found Applicant guilty of assault with intent to commit criminal sexual conduct in the first degree. Therefore, Applicant has failed to prove he was prejudiced as to this allegation.

Accordingly, this Court finds this allegation is **DENIED**.

Failure to Obtain and Present Evidence/Photographs of the Knife Found in Applicant's Truck

Applicant contends counsel was ineffective for failing to obtain and present

evidence/photographs of the knife found in Applicant's truck. This Court finds this allegation is without merit.

1. PCR Testimony

Applicant testified he wanted Counsel to introduce a picture of the knife law enforcement found in his truck to demonstrate victim was lying about the knife used. Applicant testified the victim said it was a butter knife. Counsel testified he questioned the investigator on whether the knife found in Applicant's truck was a butter knife. Counsel testified he was able to elicit testimony that no gun or butter knife was ever found. Counsel testified he did not admit the photograph of a knife because he did not want to put in evidence of the crime Applicant was charged with.

2. Discussion

This Court finds Applicant was not ineffective for failing to introduce evidence of the knife found in Applicant's truck. 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).

Counsel credibly testified he did not introduce the photograph of the knife found in Applicant's truck because he did not want to admit inculpatory evidence. Instead, this Court finds Counsel reasonably elicited testimony on cross-examination of the investigator that the knife found in the truck was not a butter knife. (Tr. p. 147). This Court finds Counsel articulated a valid reason for not introducing the photograph of the knife found in Applicant's truck. Therefore, Applicant has not proved Counsel was deficient as to this allegation.

Moreover, Applicant has failed to present sufficient evidence or testimony how the introduction of the photograph of the knife would have led to a different outcome at trial. Thus, Applicant has also failed to meet his burden establishing prejudice as this allegation.

Accordingly, this allegation is **DENIED**.

Failure to Interview/Call as a Witness, Mykayla Prunell and Failure to Introduce Call Logs¹

Applicant next contends Counsel was ineffective for failing to interview witness, Mykayla Prunell, who was with Applicant in the days following the alleged incident. Additionally, Applicant contends Counsel was ineffective for failing to call witness, Mkayla Prunell, to testify at trial as a defense witness. Furthermore, Applicant contends Counsel was ineffective for failing to introduce call logs that proved that the alleged victim continued to have contact with Applicant after the alleged incident. This Court finds these allegations are without merit.

1. PCR Testimony

Applicant testified there were call logs showing the victim called him days following the incident. Applicant testified he ignored the calls. Screenshots of the alleged calls were admitted into evidence over the State's objection. Applicant testified he requested Counsel use them at trial but he did not receive a response. Applicant testified he wanted Counsel to call Mykayla Prunell as a witness because she was present when these alleged calls came in.

Counsel testified that Applicant's prior counsel, Michael Routzong, spoke with Mykayla Prunell. However, Counsel never heard from her and she was not present at trial. Counsel testified he has no notes regarding the call logs. Counsel explained that Applicant could have testified about the call logs during his testimony at trial, but he did not.

¹ Allegations 3(b), (c), and (d) will be addressed in this section.

2. Discussion

This Court finds these allegations are without merit. This Court finds the exculpatory value of these call logs is virtually nonexistent. All that is shown from the call logs is two purported missed calls from the victim to Applicant days following the assault. Applicant has presented no evidence or testimony as to what evidentiary effect these call logs would have had on the outcome of the trial. Any evidentiary value these call logs may have is purely speculative. If Applicant had felt so strongly regarding the value these call logs would have to his defense, then he could have testified to them during trial. He did not. Moreover, Counsel credibly testified he has no recollection of these call logs, never spoke with Mckayla Prunell, and never heard from Mckayla Prunell during the entirety of his representation of Applicant. Therefore, Applicant has failed to prove Counsel was deficient as to this allegation.

Furthermore, Applicant failed to produce Mckayla Prunell as a witness during the evidentiary hearing; thus, Applicant has not met his burden of proof as to this allegation. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (“This Court has 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.”) (emphasis in original); *Pauling v. State*, 331 S.C. 606, 503 S.E.2d 468 (1998) (applicant established prejudice where nurse's notes presented at PCR hearing corroborated lack of penetration in sexual assault case); *Glover v. State*, 318 S.C. 496, 458 S.E.2d 538 (1995) (where witnesses applicant claimed could have provided an alibi defense did not testify at the PCR hearing, he could not establish any prejudice from counsel's failure to contact these witnesses); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992) (where applicant did not offer witnesses at PCR hearing but merely alleged they would

have provided him with alibi defense and testified victims had recanted their trial testimony, he failed to establish prejudice); *see also Jackson v. State*, 329 S.C. 345, 495 S.E.2d 768 (1998) (applicant failed to establish prejudice from counsel's failure to investigate criminal backgrounds of victims and witnesses where he failed to substantiate at PCR hearing that victims and witnesses had criminal records).

Accordingly, this allegation is **DENIED**.

Failure to Argue Wound on Applicant's Hand Contradicted the Alleged Victim's Version of Events

Applicant contends Counsel was ineffective for failing to argue the wound on Applicant's hand contradicted the alleged victim's version of events. This Court disagrees, and finds that Applicant has failed to meet his burden of proof as to this allegation.

1. PCR Testimony

Applicant testified he has a scar on the outside of his right index finger from a wound he received during this incident. Applicant testified the victim said he received the wound by grabbing the knife. Applicant showed this Court the scar. Applicant testified he wanted Counsel to question the victim about it. Counsel testified that during his direct examination of Applicant, he questioned Applicant regarding the knife. Counsel testified Applicant showed the jury the scar on his finger just like he did during his testimony at the evidentiary hearing.

2. Discussion

This Court finds this allegation is without merit. During direct examination of Applicant, Counsel questioned Applicant at length regarding the sharpness of the knife and the wound on his right hand. (Tr. pp. 180–185). Counsel requested Applicant show the jury the scar on his right hand in almost identical fashion as he showed this Court during the evidentiary hearing. (Tr. p.

182). On cross-examination, Counsel elicited testimony from the victim regarding the knife and how Applicant was wounded. (Tr. p. 103). This Court finds Applicant has failed to prove Counsel was deficient as to this allegation.

Furthermore, Applicant's presentation of his wound to the jury at trial was nearly identical to his presentation of the wound at the evidentiary hearing. Applicant testified as to how he received the wound at trial. Applicant has failed to show sufficient evidence or testimony as to how additional questioning of the victim regarding the wound on Applicant's hand would have led to a different outcome at trial. Thus, Applicant has failed to prove prejudice from any alleged deficiency.

Failure to Argue that the Photographs of the Alleged Crime Scene Contradicted the Alleged Victim's Version of Events

Applicant lastly contends Counsel was ineffective for failing to argue that the photographs of the alleged crime scene contradicted the alleged victim's version of events. This Court disagrees, and finds Counsel's credible testimony and the record from Applicant's trial refutes this allegation.

1. PCR Testimony

Applicant testified Counsel should have used the crime scene photos to question the victim regarding inconsistencies in her testimony. Specifically, Applicant wanted Counsel to use the crime scene photo of the inside of the house to contradict the victim's testimony that he was grabbing her and throwing her around. Applicant testified the victim said he was dragging furniture around, but the crime scene photos shows everything in place. Counsel testified he used the crime scene photos during testimony and closing argument.

2. Discussion

This Court finds this allegation is without merit. Applicant alleges Counsel should have

used the crime scene photos to contradict the victim's testimony that furniture was being dragged around. Although the victim did testify that she fell into boxes, she did not testify at trial that furniture was being dragged around. However, Counsel did use photos of the crime scene several times during the trial, including during his cross-examination of the victim. (Tr. pp. 100-101).

Furthermore, Counsel made the following argument during closing:

Think about her testimony. He's choking me. He's dragging me into the room, dragging me backwards. She's pulling on furniture and clawing, trying not to go in this bedroom. You got the pictures. It ain't the cleanest house in the world and there's a lot of stuff on them little end tables. The only thing on the ground is a candle.

I think that coffee table would have been upside down. I think all of the stuff on it would have been like a bomb through the room. The couch cushions would have been gone, the little chair on the end would have been snatched off. No. It didn't happen, that's why.

(Tr. pp. 197-198).

Counsel effectively argued the orderly nature of the furniture in the crime scene photos contradicted the victim's testimony. Therefore, Counsel was not deficient as to this allegation.

Furthermore, additional questioning of the victim as to the nature of the crime scene would have been merely cumulative to Applicant's testimony and Counsel's argument during closing. Applicant has not presented sufficient evidence or testimony of how further utilization of the crime scene photos would have led to a different outcome at trial. Therefore, Applicant has not met his burden proving prejudice.

Accordingly, this allegation is **DENIED**.

CONCLUSION

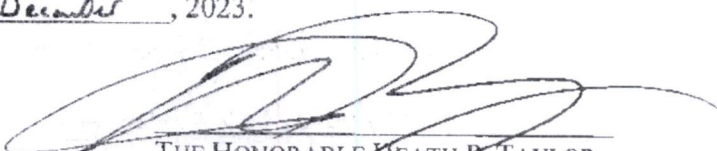
Based on the foregoing, this Court finds Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. This Court finds Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's representation. 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 18th day of December, 2023.


THE HONORABLE HEATH P. TAYLOR
Presiding Judge
Second Judicial Circuit

December 18, South Carolina