

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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Feb 23 2024

S.C. SUPREME COURT

Appeal from Charleston County
Court of Common Pleas

Honorable Kristi F. Curtis, Circuit Court Judge

Case No.: 2019-CP-10-4491

CHAVIAS JENKINS, # 309361 Appellant,

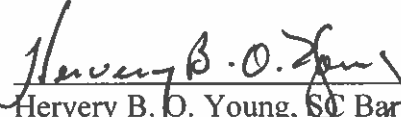
v.

THE STATE Respondent.

NOTICE OF APPEAL

Chavias Jenkins, #309361, appeals the order dated January 17, 2024, of the Honorable Kristi F. Curtis denying his Post-Conviction Relief application. Appellant received written notice of entry of this order on January 24, 2024.

February 23, 2024


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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Chavias Jenkins, #309361,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT

) Case No. 2019-CP-10-4491

ORDER OF DISMISSAL

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CLERK OF COURT

This matter comes before this Court by way of Applicant Chavias Jenkins's Amended Application for post-conviction relief application filed on April 4, 2021, asserting various allegations of ineffective assistance of counsel. Prior to the Amended Application, Applicant had filed for post-conviction relief on August 26, 2019. Respondent had made a Return to the original application on February 6, 2020 and requested an evidentiary hearing.

An evidentiary hearing was convened on June 23, 2022, at the Charleston County Courthouse. Applicant was present and represented by James K. Falk ("PCR Counsel"). Samantha J. Weidauer represented Respondent. After reviewing the record and hearing the testimony at the PCR hearing, the Court finds that Applicant's allegations are without merit, denies relief, and dismisses the action with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined pursuant to orders filed with the Charleston County Clerk of Court. In December 2013, the Charleston County Grand Jury indicted Applicant for carjacking (2013-GS-10-07433), kidnapping (2013-GS-10-07434), armed robbery (2013-GS-10-07435), and possession of a weapon during a violent crime (2013-GS-10-07436). Attorneys Mary Ford and Luke Malloy of the Ninth Circuit Public Defender's Office were appointed to represent Applicant.

Assistant Solicitors Nina Savas and Alex Zeigler of the Ninth Circuit Solicitor's Office prosecuted the case. On August 24, 2016, Applicant proceeded to trial before the Honorable Kristi L. Harrington. The jury convicted Applicant of all charges. Judge Harrington sentenced Applicant to imprisonment for an aggregate sentence of twenty-two years. Per the court's order, the sentences run concurrently and, at sentencing, the Applicant received credit for time served.

Applicant filed a timely notice of appeal. Chief Appellate Defender Robert M. Dudek of the Office of Appellate Defense perfected the appeal. After considering the Applicant's brief, the South Carolina Court of Appeals decided Applicant's case without oral argument, and dismissed Applicant's appeal on May 1, 2019. The remittitur was returned to the circuit court on May 17, 2019. This action follows.

ALLEGATIONS RAISED IN THE APPLICATION AND AT THE HEARING

In his Amended Application for post-conviction relief, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. Applicant believes the State failed in its discovery obligations under Brady v. Maryland by not disclosing to defense counsel that the witness who supplied the initial anonymous tip to law enforcement later claimed she did not provide the tip and that someone was using her name;
2. Counsel failed to object to hearsay testimony from Victim Maria Davila at page 145, lines 16-22 of the trial transcript (the "Transcript");
3. Counsel failed to object to hearsay statements uttered at page 191, line 25 through page 192, line 9 of the Transcript;
4. Counsel failed to object to Travis Repman's speculative testimony at page 224, line 2 of the Transcript;
5. Counsel failed to object to Travis Repman's bolstering testimony regarding the reliability of the method law enforcement used in presenting the photo lineup to Victim;
6. Counsel failed to object to Joseph Niemiec's hearsay testimony at page 235, lines 1-4 of the Transcript;

7. Counsel allowed Angelica Loaiza to testify via Skype versus requiring her to appear live;
8. Counsel failed to object to Al Hallman's hearsay testimony regarding a fingerprint analysis report prepared by a non-testifying expert witness and
9. Counsel failed to object to the State's bolstering comments regarding the testimony of its expert witness at page 345, line 21 to page 346, line 2 of the Transcript.

At the PCR hearing, PCR counsel also questioned trial counsel about whether he raised a Fourth Amendment issue related to the search of the hotel room. (PCR Tx. 30-33).

STANDARD OF REVIEW

An applicant may seek PCR upon the following types of allegations:

1. That the conviction or the sentence was in violation of The Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole, or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a prima facie violation of this

constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction. Strickland v. Washington, 466 U.S. 668 at 687 (1984).

To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Id. at 687-88; Cherry v. State, 300 S.C. 115, 117—18, 386 S.E.2d 624,625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[without proof of both deficient performance and prejudice to the defense... it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

The applicant has the burden of establishing both deficiency and prejudice in order to be entitled to relief. Hughes v. State, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001); Rule 71.1 (e), SCRPC. To prove deficient performance, the applicant must establish that, in light of all the circumstances, the acts or omissions complained of "were outside the wide range of competence" demanded of attorneys in criminal cases. Strickland, 466 U.S. at 688. To prove prejudice, the applicant must establish "a reasonable probability that, but for counsel's

unprofessional errors, the result of the proceeding would have been different.” Id. at 694. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” Id. Significantly, the “ultimate focus of inquiry must be on fundamental fairness of the proceeding whose result is being challenged.” Id. at 696.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record, including the Clerk of Court records regarding the Applicant’s convictions, trial transcript, and transcript from the evidentiary hearing. Additionally, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to scrutinize their credibility. After a thorough review of all records and evidence before this Court, this Court finds Applicant has not met his requisite burden of proof to establish he is entitled to post-conviction relief and hereby denies and dismisses this application with prejudice. Specific findings of fact and conclusions of law are set forth below as required pursuant to S.C. Code Ann. § 17-27-80 (2014).

First Allegation: Regarding the Anonymous Tip

Applicant alleges the State failed in its discovery obligations under Brady v. Maryland by not disclosing to Counsel that a witness who supplied an initial anonymous tip to law enforcement later claimed she did not provide the tip and that someone was using her name. At the PCR hearing, Counsel testified the discovery included information that Keyetta Garrett had reported to police that Applicant’s girlfriend “was bragging about this incident in a bar.” Counsel stated he attempted to locate Garrett but was unable, and the solicitor initially told him Garrett was uncooperative and did not provide a written statement. At trial, the solicitor relayed that Garrett did not want to be involved and had indicated someone else provided the tip but used her name. At trial, the alleged

tipster was not on the witness list and did not testify. Further, neither the substance of the tip nor any of the statements made during the tip came in at Applicant's trial.

Post-trial, Counsel made a motion for a new trial saying that he should have been told earlier than trial that the witness had recanted. Counsel testified that the fact the caller recanted and became uncooperative did not impact his trial strategy, but he still made a motion for a new trial on that ground. The motion was denied.

Applicant has failed to show wrongdoing by the solicitor who, Counsel agrees, provided discovery. This allegation was raised under "failing to provide exculpatory evidence." Further, Applicant has shown no prejudice resulted when the witness did not testify at trial and neither the substance nor any of the statements made in the tip came in at trial—especially given that Counsel stated at trial that the fact the caller became uncooperative did not impact his strategy. Thus, this Court finds Counsel was not deficient and Applicant did not prove prejudice. Therefore, this allegation must be denied and dismissed with prejudice.

Second Allegation: Counsel failed to object to Hearsay Testimony from Maria Davila

Applicant alleges Counsel was ineffective for failing to object to testimony from the victim, Maria Davila ("Victim"), at page 145, line 16-22 of the Transcript. This testimony concerned Victim's plan to meet someone who wanted to purchase a phone from her. At lines 16-19, Victim testified "I went, and I waited for her. She never showed. She cancelled. ... she told me, her boyfriend was going to meet me." At line 20 she was asked: "So she told you her boyfriend was going to meet you instead of her?", to which Victim responded "Yes".

Counsel testified that he did not object for strategic reasons. The statement was not objectionable because the defense was not disputing what happened in terms of that conversation. Defense's point was that it was a case of mistaken identity: that it was not the Applicant or his

girlfriend that responded or that put up the initial Craigslist ad soliciting a phone. So, Counsel did not find the statement in any way contradictory to his defense at trial.

This Court finds Counsel's testimony on this issue credible. When 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, 689 S.E.2d 629 (2010). Therefore, this Court finds Counsel was not deficient for failing to object to the statement above. Further, Applicant did not establish any prejudice resulted from the statement. Therefore, this allegation must be denied and dismissed with prejudice.

Third Allegation: Counsel failed to object to Hearsay by Cobb

Applicant alleges Counsel was ineffective for failing to object to testimony from an officer involved in the case, Sergeant Darrin Cobb ("Cobb") at page 191, line 25 through page 192, line 9. The testimony involved what Victim reported to law enforcement about the incident, which was that the person who did the crime had a black handgun and took about \$300 from her, in addition to her telephone and vehicle.

Counsel testified that he did not object for strategic reasons. The statement was not objectionable because Applicant was not disputing these facts. His point was that it was a case of mistaken identity: that it was not Applicant that took Victim's car, phone, and money with a gun.

This Court finds Counsel's testimony on this issue credible. Counsel did not object based on his trial strategy. When 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, 689 S.E.2d 629 (2010). Therefore, this Court finds Counsel was not deficient for failing to object to the statement above. Further, Applicant did not establish any prejudice resulted from the statement. Therefore, this allegation must be denied and dismissed with prejudice.

Fourth Allegation: Counsel failed to object to Speculative testimony by Repman

Applicant alleges Counsel was ineffective for failing to object to what he calls speculative testimony from an officer involved in the case, Detective Travis Repman (“Repman”) at page 224, line 2. After being directed to the Transcript and reviewing the testimony, Counsel indicated that the statement was the subject of an objection he had already made at trial and been overruled on.

This Court finds Counsel’s testimony on this issue credible. Counsel testified he felt the issue was covered by a previous objection he had made and been overruled on. He further said, “I felt that I’d raised the issue for the Court and the Court had already made its decision.” Therefore, he did not object again on what he saw as the same point. When 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, 689 S.E.2d 629 (2010). Therefore, this Court finds Counsel was not deficient for failing to object to the statement above. Further, Applicant did not establish any prejudice resulted from the statement. Therefore, this allegation must be denied and dismissed with prejudice.

Fifth Allegation: Counsel failed to object to allegedly bolstering testimony by Repman

Applicant alleges Counsel was ineffective for failing to object to testimony from Repman at page 218, lines 20-21. Repman explained the type of line up used in the case was a “double-blind” lineup, which means “[y]ou have your subject along with five fillers. The photos are presented one-by-one to the witness, or victim in this case. Double-blind means that I don’t know who the person is and obviously they don’t until possibly they see the person in that lineup.” Repman then was asked a follow up question. The question “What is the significance of doing it one at a time?”, was objected to by Counsel and the objection was overruled. Repman then

responded, at lines 20-21, "It's believed that this is the most reliable false positive way to show a lineup." It is this statement that is objected to.

Counsel testified that he had objected on this issue and he felt that the statement was covered by his objection. He further noted, "I felt like I had already raised the issue to the Court for the Court's consideration. And the court had made its ruling; it overruled the objection. And I felt I would have gotten the same response [if I raised the same objection] to these additional questions. Further, there's an annoyance factor, you potentially annoy the judge and jury [for the same answer]."

This Court finds Counsel's testimony on this issue credible. Counsel felt the issue was covered by his previous objection, which had just been ruled on, as reflected on line 19 of page 218. The witnesses answer then immediately followed at lines 20-21. Therefore, he did not object again on what he saw as the same point. When 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, 689 S.E.2d 629 (2010). Therefore, this Court finds Counsel was not deficient for failing to object to the statement above. Further, Applicant did not establish any prejudice resulted from the statement. Therefore, this allegation must be denied and dismissed with prejudice.

Sixth Allegation: Counsel failed to object to Hearsay by Niemiec

Applicant alleges Counsel was ineffective for failing to object to testimony from an officer involved in the case, Sergeant Joseph Niemiec ("Niemiec") at page 235, lines 1-4 of the Transcript. Counsel testified (and the Transcript reflects at page 234, lines 21-23 and page 235, line 7) that he had already objected to this line of questioning. Counsel testified the Court ruled on his first objection by saying the witness could answer yes or no, but overruled the objection and that the

second objection was sustained. Counsel also testified he did not think the statement he was alleging was hearsay was harmful.

The questions and answers at page 235, lines 1-4 are:

Q: Did she [Candice Singleton] mention she lived alone or with someone?

A: She lived with someone.

Q: And who was that person?

A: Chavias Jenkins [Applicant].

Counsel further indicated that the defense was not disputing a connection between Candace Singleton and Applicant so “although it may be hearsay,” it was not harmful to the case.

This Court finds Counsel’s testimony on this issue credible. Counsel felt that he did object, and a ruling was obtained. Trial strategy did not involve him continuing to object when there was no dispute of any connection between Singleton and Applicant. When 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, 689 S.E.2d 629 (2010). Therefore, this Court finds Counsel was not deficient for failing to object to the statement above. Further, Applicant did not establish any prejudice resulted from the statement which Counsel indicated was not harmful to the case. Therefore, this allegation must be denied and dismissed with prejudice.

Seventh Allegation: Counsel failed to object to Loaiza testifying via Skype

Applicant alleges Counsel was ineffective by allowing Angelica Loaiza (“Loaiza”), a former crime scene tech with North Charleston Police Department and, at the time of trial, resident of Miami to testify via Skype as opposed to requiring her to appear live.

Counsel testified “I realized that could have been the basis for an objection. However, I felt like this witness was favorable to our defense. A big part of our defense was that the crime

scene had responded immediately. They gathered evidence and specifically fingerprints and none of those matched [Applicant]. So I felt that her testimony was helpful to our [mistaken identity] defense.” He further testified that she was an out-of-state witness that he did not have under subpoena and that he wanted her testimony that in addition to not finding fingerprints of Applicant, they also collected DNA and none of it matched, and that furthered the mistaken identity defense.

This Court finds Counsel’s testimony on this issue credible. Counsel did not object for strategic reasons. When 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, 689 S.E.2d 629 (2010). Therefore, this Court finds Counsel was not deficient for failing to object to the statement above. Further, Applicant did not establish any prejudice resulted from the testimony which did not link back to Applicant. Therefore, this allegation must be denied and dismissed with prejudice.

Eighth Allegation: Counsel failed to object to Hearsay by Hallman

Applicant alleges Counsel was ineffective for failing to object to testimony by Al Hallman (“Hallman”) at page 301, line 12 to page 302, line 8 of the Transcript. Hallman, retired at the time of trial, had worked for the North Charleston Police Department for 27 years and had approximately 18 years’ experience as a forensics investigator and supervisor. At trial Hallman was asked about a fingerprint analysis done by someone else and the resulting conclusion.

Counsel testified that he did not object for strategic reasons. While Counsel knew Hallman was testifying to someone else’s report, he wanted the results of the report in evidence. He noted “While I think it is objectionable, I did not object because it just bolstered the fact that the fingerprints were not matched to [Applicant].” There were six latent prints removed from Victim’s car sent for analysis and Counsel was able to elicit from Hallman and confirm that none of the

fingerprints were a match to Applicant. Counsel indicated that this bolstered his position that there was no direct evidence linking Applicant to the crime.

This Court finds Counsel's testimony on this issue credible. Counsel did not object based on his trial strategy. When 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, 689 S.E.2d 629 (2010). Therefore, this Court finds Counsel was not deficient for failing to object to the statement above. Further, Applicant did not establish any prejudice resulted from the statement. Therefore, this allegation must be denied and dismissed with prejudice.

Ninth Allegation: Counsel failed to object to allegedly bolstering comments by the State

Applicant alleges Counsel was ineffective for failing to object to allegedly bolstering comments by the State reflected at page 345, line 21 to page 346, line 2 of the Transcript. The comments at issue were made during the State's closing argument, in which the solicitor suggested (at the points cited above) that the jury not place too much emphasis on there not being fingerprints found in the car.

Counsel testified that (1) fingerprints were recovered and the State's analysis revealed they did not match Applicant's; (2) the State's comments were not evidence, it was closing argument; and (3) he did not object because he did not feel the comment was harmful to his case. He further testified that he had objected three times on other issues raised during the State's closing argument, demonstrating his willingness to object to matters in the State's closing argument that he believed merited such action. He considered the contested matter and did not feel he needed to object to the statements.

Counsel testified that he did not object for strategic reasons. The statement was not harmful and did not rise to the level where he felt he needed to object. This Court finds Counsel's testimony

on this issue credible. Counsel has many years of experience in criminal defense law, trying cases to a jury, evaluating the various factors that go into trial strategy, was not opposed to objecting when he felt the need, and did object multiple other times during trial, including three times during the solicitor's closing argument. He did not feel an objection was warranted here. When 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, 689 S.E.2d 629 (2010). Therefore, this Court finds Counsel was not deficient for failing to object to the statement above. Further, Applicant did not establish any prejudice resulted from the statement. Therefore, this allegation must be denied and dismissed with prejudice.

Tenth Allegation: Counsel failed to object to an allegedly Improper Search

At the PCR hearing, Applicant (through counsel) asked Counsel if he had considered whether the search of the hotel room raised a Fourth Amendment issue. Counsel averred that he did not believe he had standing to raise a Fourth Amendment argument for the room, which was in Singleton's name. (PCR 32). Although he agreed there was evidence that Applicant was also living in the room, he did not recall whether Applicant admitted he lived in the room. He speculated that "an argument could have been made, I suppose, that he had a right to privacy and it was violated because he was living in the room." (PCR 32-33). On cross-examination, he agreed that Singleton allegedly consented to the search of the room. He further testified that Singleton testified at trial that she took law enforcement to the room, where she was staying with Applicant.

This Court finds Applicant failed to prove Counsel was ineffective for not raising a Fourth Amendment search issue. Initially, Singleton testified she took the officers to the room, where she was staying with Applicant. (Tr. 254). Thus, evidence showed that law enforcement had valid consent to search the room. The issue of whether Applicant *also* lived in the room is inapposite

because Singleton—who testified she lived in the room—had authority to consent to the search.¹ See State v. Cannon, 336 S.C. 335, 520 S.E.2d 317 (1999) (providing any person with an equal right to use or occupy property may consent to its search); cf. State v. Laux, 344 S.C. 374, 376, 544 S.E.2d 276, 277 (2001) (“The test of whether a third party has sufficient status to consent to a search is whether the third party possesses common authority over or has some other sufficient relationship to the premises or effects searched.”); id. at 377, 544 S.E.2d at 277 (“Whether an individual has actual authority to consent to a search is not, however, necessarily dispositive. In Illinois v. Rodriguez, 497 U.S. 177, 110 S.Ct. 2793, 111 L.Ed.2d 148 (1990), the United States Supreme Court held a consent to search may be valid if based upon apparent authority.”). Based on Singleton’s testimony, Singleton had apparent and actual authority to consent to the search. Thus, Applicant did not prove Counsel was deficient for failing to challenge the search of the room. Likewise, Applicant did not show it was reasonably likely any evidence would have been suppressed had Counsel challenged the search on this basis. Thus, this claim is denied.

CONCLUSION

After careful consideration of Applicant’s Amended Application for Post-Conviction Relief, the Record of the case, the arguments of Attorneys Falk and Weidauer, and the testimony of witnesses, 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. To satisfy the two prongs of Strickland, the Applicant must show that counsel was deficient and also show the deficiency resulted in prejudice. Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984). The Applicant has not met this burden on any of the allegations made. Therefore, the Court denies Applicant’s requested relief in this matter.

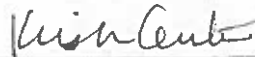
¹ Notably, the only basis the State had for introducing evidence was to *link* Applicant to the room, which was in close proximity to the crime itself.

This Court notes if Applicant desires to appeal this Order, he must file and serve a notice of appeal within thirty days from the receipt of this Order by his counsel of record. See Rule 203 and 243, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State.

AND IT IS SO ORDERED this 17 day of Jan., 2024.



KRISTI CURTIS
Presiding Judge
Ninth Judicial Circuit

Sumter, South Carolina