

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM HAMPTON COUNTY
Court of Common Pleas
The Honorable Roger Young, Sr., PCR Action Judge
2021-CP-25-00421

Joey Coleman, #347816,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

RECEIVED

Mar 06 2024

S.C. SUPREME COURT

NOTICE OF APPEAL

Joey Coleman appeals the denial of his post-conviction relief application. The post-conviction relief action was heard and denied by the Honorable Roger Young, Sr., circuit court judge, on November 27, 2023, and was denied by written order issued filed on December 18, 2023. Applicant received notice of the judgement on February 27, 2024.

/s Chelsey F. Marto
Chelsey F. Marto, Esquire
Attorney for the Applicant
The Law Office of Chelsey F. Marto, LLC
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Other Counsel of Record:
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Columbia, SC, 29211-1549

STATE OF SOUTH CAROLINA)
COUNTY OF HAMPTON)

IN THE COURT OF COMMON PLEAS)
FOR THE FOURTEENTH JUDICIAL)
CIRCUIT)

Joey D. Coleman, SCDC #347816,)

Case No. 2021-CP-25-00421)

Applicant,)

FILED)

ORDER OF DISMISSAL)

v.)

AM/PM)

State of South Carolina,)

DEC 18 2023)

Respondent.)

MYLINDA D. NETTLES)
CLERK OF COURT)
HAMPTON COUNTY, SC)

This matter is before the Court pursuant to an application for post-conviction relief (PCR) filed by Joey Coleman (Applicant) on December 30, 2021. On November 28, 2023, an evidentiary hearing convened before the Honorable Roger M. Young, Sr. Applicant was present and represented by Chelsey F. Marto, Esquire. Assistant Attorney General Bryan T. Hall represented Respondent. At the hearing, Applicant testified on his own behalf and called as a witness Diane P. DeWitt, Esquire (Counsel). Respondent did not call any witnesses. Following a thorough review of the trial transcript and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving a thirty (30) year sentence. In March 2019, the Hampton County Grand Jury indicted Applicant for armed robbery (2018-GS-25-00440); two (2) counts of kidnapping (2018-GS-25-00441; -00442); possession of a weapon during the commission of a violent crime (2018-GS-25-00443) and two (2) counts of assault and battery in the first degree (2018-GS-25-00444; -00445). These charges

arose from an incident that occurred at Snappy Foods convenience store on November 15, 2018, in which Applicant was seen on surveillance video robbing the store at gun point.

On February 3, 2020, Applicant proceeded to a jury trial before the Honorable Carmen Mullen. Assistant Solicitor Reed Evans prosecuted the case on behalf of the Fourteenth Circuit Solicitor's Office. The jury convicted Applicant as indicted. Judge Mullen sentenced Applicant to a concurrent sentence of thirty (30) years imprisonment for armed robbery; thirty (30) years for both counts of kidnapping; ten (10) years on both counts of assault and battery in the first degree; five (5) years for possession of a weapon during the commission of a violent crime. On February 13, 2020, Applicant filed a timely notice of appeal. On December 8, 2021, the Court of Appeals dismissed the Applicant's appeal after consideration of Applicant's pro se brief and review pursuant to *Anders v. California*, 386 U.S. 738 (1967).¹ The Remittitur was sent on January 5, 2022.

CURRENT APPLICATION

Applicant timely commenced this PCR action on December 30, 2021, alleging he is being held in custody unlawfully for the following reasons:

- Ineffective assistance of counsel for failure to raise adequate defense.
- Evidence is insufficient to support the verdict.

On October 10, 2023, Respondent filed a return. On November 11, 2023, Applicant filed an amended application, raising the following issues:

- Ineffective Assistance of Counsel
 - a. Failure to investigate and raise Applicant's mental health issues in mitigation.
 - b. Failure to move to suppress, or in the alternative, effectively cross-examine Gregory Alexander regarding the beer bottle for an issue with chain of custody.

¹ *State v. Coleman*, 2021-UP-431 (S.C.Ct. App. filed Dec. 8, 2021).

- c. Failure to effectively cross-examine the first suspect [Karen Wilcox] concerning credibility and her identification of Applicant and failure to raise this issue during closing argument.

At the hearing, Applicant proceeded solely on the allegations contained in his amended application. Before this Court are the Hampton County Clerk of Court records of the subject conviction; Applicant's records from the South Carolina Department of Corrections; appellate records; the trial transcript; and the records of the current PCR action.

TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant averred Counsel should have investigated his mental health issues and presented them for purposes of mitigation. Applicant alleged he suffers from undiagnosed Schizophrenia, and if Counsel had investigated and presented this issue, Applicant could have received a reduced sentence. On cross-examination, Applicant testified that he has never seen a doctor for mental health issues outside of the Hampton County Detention Center, does not have any documentation of a mental health issue, and did not inform Counsel of a mental health issue but believes Counsel should have known.

Applicant asserted Counsel should have moved to suppress the beer bottle obtained at the crime scene because of chain of custody concerns and the presence of other DNA on the bottle. Applicant testified that Counsel should have cross-examined eyewitness, Karen Wilcox, on her identification of Applicant and her vision. Applicant alleges Counsel failed to effectively challenge the witness' identification and failed to argue against the identification in closing argument.

Diane P. Dewitt (Counsel) testified she met with Applicant numerous times and had sufficient and adequate time to meet and discuss the case. Counsel testified she explained to Applicant the charges the State brought against him, the elements of each charge, and the State's burden to prove each element. Counsel testified she received discovery from the State and reviewed the following evidence with Applicant: a surveillance video from the convenience store;

DNA analysis conducted on a beer bottle held by the robber; Karen Wilcox's statement and photo-identification of Applicant; and Sergeant Varnadoe's identification of Applicant from a picture of the surveillance video. Counsel testified that she conducted further investigations into Applicant's alibi that he was crabbing with his uncle at the time of the robbery. According to Counsel, the alibi was disproved by Applicant's uncle.

Counsel testified Applicant did not inform her of any mental health issues. Counsel testified she had no concerns about Applicant's competency, mental health, or his ability to understand the information Counsel explained. Counsel testified that she asked Applicant's uncle about Applicant's mental health, to which Applicant's uncle indicated Applicant does not have any mental health problems. On cross-examination, Counsel testified that she would have raised mental health issues during mitigation if Applicant had informed her of any mental health issues.

On cross-examination, Counsel testified she did not object to or challenge Chief Gregory Alexander's testimony regarding the beer bottle because the solicitor was thorough in establishing the chain of custody. Counsel testified she did not believe there was a basis to object to the chain of custody for the beer bottle. Counsel testified she recalled Timothy French, qualified as an expert in DNA analysis, testifying that the DNA swab collected from the beer bottle was one hundred twenty-six (126) quintillion times more likely to be from Applicant than a random person.

Counsel testified she moved for a *Niel v. Biggers* hearing to challenge Karen Wilcox's identification of Applicant. Counsel also testified she cross-examined Wilcox on her blurry vision, influence of medications, her memory, and the fact that Wilcox did not wear her prescribed glasses during trial. Counsel testified she further cross-examined Wilcox on her identification of Applicant as the only black man in the courtroom. On cross-examination, Counsel testified she also raised those issues during closing arguments as reflected by the trial transcript.

A handwritten signature in black ink, appearing to be the initials 'JW' or similar, located at the bottom right of the page.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the trial transcript in its entirety and has heard the testimony at the PCR hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony. After a careful review based on the *Strickland* standard set forth below, this Court finds Applicant has failed to meet his burden of proof. Below are this Court's findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations. Rule 71.1(e), SCRPC; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). An applicant alleging ineffective assistance of counsel must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. at 441, 334 S.E.2d at 813. "The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases." *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler*, 286 S.C. at 441, 334 S.E.2d at 813. An applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989). To establish ineffective assistance of counsel, 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. *Strickland*, 466 U.S. at 687-88; *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625.

Failure to Investigate and Present Mental Health Issues for Mitigation



This Court finds Applicant failed to prove Counsel was ineffective for failing to investigate his mental health issues and failing to present such issues for purposes of mitigating the sentence. At the PCR hearing, Applicant testified he never informed Counsel of any mental health issues and did not have documentation of such issues. This Court finds **credible** Counsel's testimony that Applicant did not inform her of any mental health issues during representation, and she had no knowledge or concerns about Applicant's mental health. Thus, Applicant did not meet his burden of proving Counsel's performance was deficient. Accordingly, relief is DENIED.

***Failure to Move to Suppress or Effectively Challenge
DNA Evidence from Beer Bottle for Chain of Custody***

This Court finds Applicant failed to prove Counsel was ineffective for failing to move to suppress or effectively cross-examine Gregory Alexander for chain of custody concerns on DNA analysis from the beer bottle collected at the scene. At trial, Michael Strauss testified he collected, took into evidence, and submitted to the Beaufort County lab the beer bottle that the robber placed on the counter shortly before the robbery. (R. 159-160). Captain Joe Loadholt testified that when Applicant was arrested, a nurse at the detention center took a buccal swab of Applicant for DNA analysis, and Loadholt took the buccal swab to SLED in Columbia. (R. 226-228). Gregory Alexander, Chief of the Yemassee Police Department, testified that he did not take the buccal swabs but was familiar with them. (R. 246). Alexander testified the solicitor mistakenly told him to take the buccal swabs to SLED for comparison with the swabs collected from the beer bottle. (R. 246-47). Alexander testified the solicitor was mistaken because the solicitor did not realize the Yemassee PD had already taken the swabs from the beer to the Beaufort County lab for analysis. (R. 247). Alexander testified that when the mistake was realized, Chief Mark Keel of SLED informed Alexander that the buccal DNA swabs would have to be taken to Beaufort County to be compared with the swabs from the beer bottle since SLED did not take the original DNA. (R. 248).



Alexander testified that Dawn Crawford picked up the buccal swabs from SLED and took them to Beaufort. (R. 248). Dawn Crawford testified that she transported the buccal swabs from SLED in Columbia to the Yemassee PD, then to the Beaufort County Sheriff's Office lab. (R. 266-67). Timothy French, Beaufort County Sheriff's DNA analyst, testified he received the DNA swabs from Dawn Crawford, and the evidence was sealed and unopened. (R. 255).

Based on the trial transcript, this Court finds the chain of custody was established by the testimony presented at trial. Further, this Court finds **credible** Counsel's testimony that she did not believe there was a basis to move to suppress or cross-examine Gregory Alexander for chain of custody concerns because the testimony at trial established the chain of custody. Thus, Applicant did not meet his burden of proving Counsel's performance was deficient. Accordingly, relief is DENIED.

***Failure to Effectively Cross-Examine Karen Wilcox and
Raise Concerns During Closing Argument***

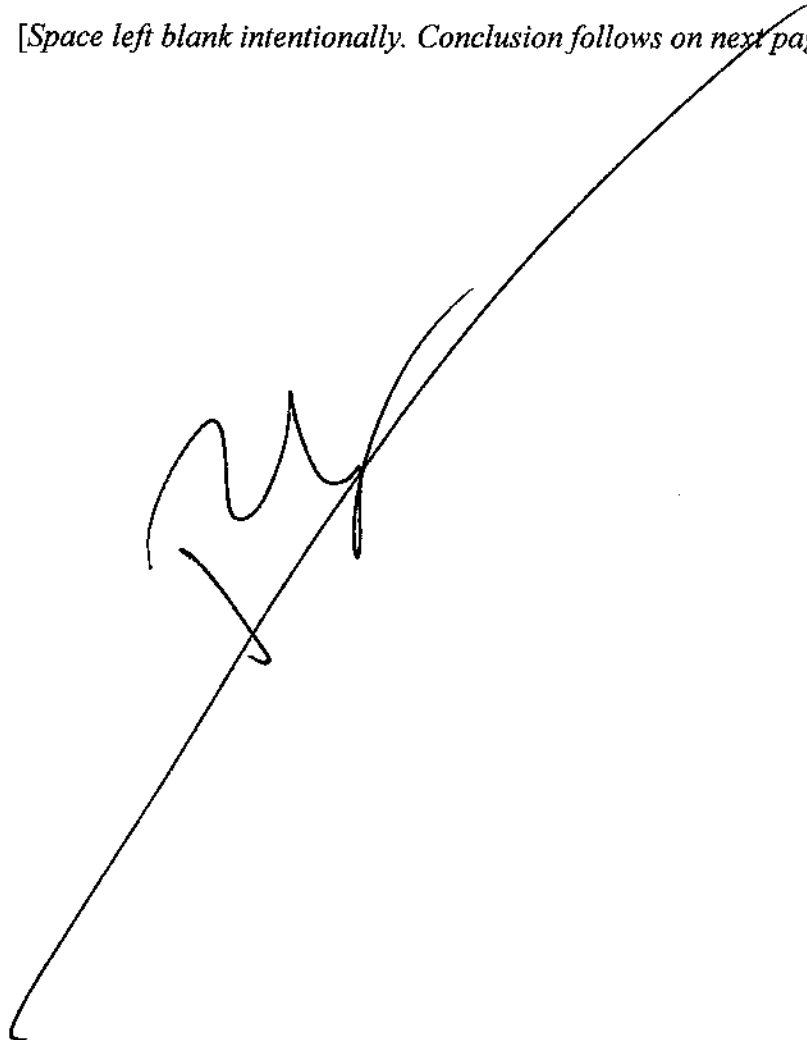
This Court finds Applicant failed to prove Counsel was ineffective for failing to effectively cross-examine Karen Wilcox on her identification of Applicant and failing to raise this issue during closing argument. Counsel moved for a pre-trial hearing pursuant to *Neil v. Biggers*², in which Counsel challenged Wilcox's identification of Applicant from a six (6) photo lineup while in police custody. (R. 56-04). The trial court found the evidence supported a finding that the photo lineup was not unduly suggestive, and Wilcox's identification was reliable and admissible. (R. 104-05). During trial, Counsel cross-examined Wilcox on her view of Applicant's face; the medications Wilcox was taking; and Wilcox's identification of applicant while being in police custody. (R. 203-04; 205-06; 210-11). Counsel questioned Wilcox about her blurry vision, and the fact that Wilcox was not wearing her prescription eyeglasses while testifying at trial (R. 210-211). Counsel

² *Neil v. Biggers*, 409 U.S. 188 (1972).



also cross-examined Wilcox on her prior convictions for shoplifting and obtaining goods under false pretenses. (R. 209). Counsel argued these issues before the jury during closing arguments, raising concerns about Wilcox being under the influence of medications, having blurry vision, and not wearing her eyeglasses. (R. 298-99). This Court finds the trial transcript refutes Applicant's allegation that Counsel did not effectively cross-examine Wilcox and did not raise concerns regarding the identification during closing argument. Thus, Applicant did not meet his burden of proving Counsel's performance was deficient. Accordingly, relief is DENIED.

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CONCLUSION

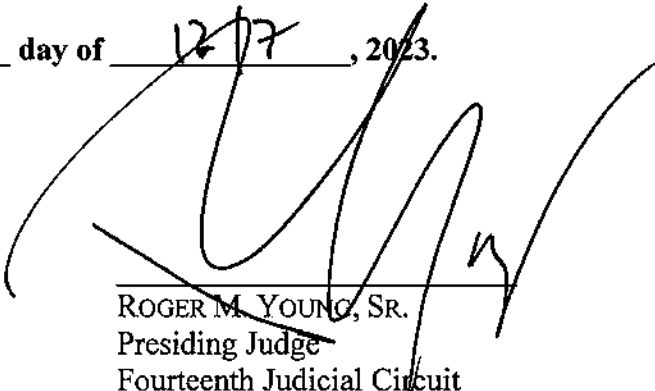
Based on the foregoing, this Court finds Counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Thus, this application is DENIED and dismissed with prejudice.

Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. *See* Rule 203, SCACR. Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g), SCRCP. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

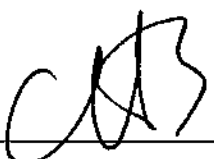
THEREFORE, IT IS SO ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant must be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED ON THIS 12/17 day of 2023.



ROGER M. YOUNG, SR.
Presiding Judge
Fourteenth Judicial Circuit


_____, South Carolina



ALAN WILSON
ATTORNEY GENERAL

December 14, 2023

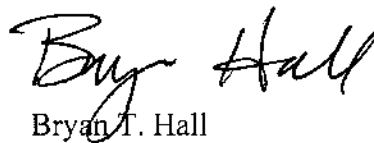
The Honorable Mylinda D. Nettles
Hampton County Clerk of Court
Post Office Box 7
Hampton, South Carolina 29924-0007

Re: Joey D. Coleman, #347816 v. State of South Carolina
Case No.: 2021-CP-25-00421

Dear Ms. Nettles:

Enclosed please find the original Order of Dismissal signed by the Honorable Roger M. Young, Sr., in the above-captioned case, for filing in your office. Please forward a time-stamped copy back to our office for our file.

Sincerely,


Bryan T. Hall
Assistant Attorney General

BTH/vh

cc: Chelsey F. Marto, Esquire