

STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM BAMBERG COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Edward W. Miller, Circuit Court Judge

Case No. 2022-CP-05-00105

Randy Chestnut, #327615, Petitioner,

v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

Applicant, Randy Chestnut, appeals the order of the Honorable Edward M. Miller, filed on or about February 26, 2024, and received by the undersigned on March 28, 2024.



April 4, 2024

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STATE OF SOUTH CAROLINA)
COUNTY OF BAMBERG)
))
Randy Chestnut, #327615,)
))
Applicant,)
))
v.)
))
State of South Carolina,)
))
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

Case No. 2022-CP-05-00105

ORDER OF DISMISSAL

FILED
BAMBERG COUNTY
2024 FEB 25 AM 9:28

INTRODUCTION

The matter before this Court arises from an application for post-conviction relief (“PCR”) commenced by Randy Chestnut (“Applicant”) on April 18, 2022, and amended on January 13, 2023. On January 17, 2023, a hearing into the matter was convened before the Honorable Edward W. Miller at the Aiken County Courthouse. Applicant was present and represented by Ashley A. McMahan, Esquire. Assistant Attorney General Zachary W. Jones represented the State. After hearing the testimony at the PCR hearing and upon full review of the record, this Court finds all of Applicant’s allegations are without merit. For the reasons discussed below, this Court denies and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined within the South Carolina Department of Corrections. On December 6, 2018, Applicant entered a home in Demark, South Carolina, without consent, and stole personal property from inside. The home invasion was captured on motion activated-surveillance cameras around the home. Applicant later admitted to law enforcement that he entered

the home and carried away personal property but claimed that he was owed money by the homeowners for drugs he had previously provided.

Applicant was arrested and subsequently indicted by the Bamberg County Grand Jury for first-degree burglary (2019-GS-05-0024). The State subsequently served Applicant with its notice of intent to seek life without parole pursuant to S.C. Code Ann. § 17-25-45 based on Applicant's prior conviction for armed robbery (2010-GS-05-0001). Applicant was represented by Deputy Public Defender C. David Hayes ("Counsel") and Assistant Public Defender Wallis A. Alves of the Second Circuit Public Defender's Office. The case was prosecuted by Assistant Solicitors R Jackson Cooper and Michael H. Emmer, III, of the Second Circuit Solicitor's Office.

On April 23, 2019, the State called the matter to trial before the Honorable Thomas L. Hughston, circuit court judge, and a jury. Following a two-day trial, the jury convicted Applicant as indicted. Judge Hughston sentenced Applicant to life imprisonment without the possibility of parole ("LWOP") pursuant to Section 17-25-45.

Applicant filed a timely notice of appeal. Appellate Defender David Alexander of the South Carolina Commission on Indigent Defense-Office of Appellate Defense perfected Applicant's appeal by filing a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967) with the Court of Appeals on the following issue:

Whether the trial judge erred in admitting allusions to selling drugs made in appellant's statement in violation of Rule 403 and 404, SCRE?

Appellate counsel simultaneously submitted a petition to be relieved as counsel for Applicant. Following an *Anders* review¹, the South Carolina Court of Appeals dismissed the appeal. *State v. Randy Chestnut*, Op. No. 2021-UP-255 (S.C. Ct. App. filed July 7, 2021). The

¹ Despite being notified by the Court of Appeals that he could submit his own *pro se* brief, Applicant elected not to do so.

remittitur was issued on July 26, 2021.

CURRENT APPLICATION

Applicant timely commenced his first PCR application on April 18, 2022. In his application, Applicant raised the following claims of ineffective assistance of counsel:

10 (a) Ineffective assistance of counsel

11(a) "See attached Page A"

10 (b) Due Process/Miscarriage of Justice

11(b) "See attached Page A"

10 (c) Falsified arrest warrant

11(c) "was arrested without probable cause"

Despite the reference to "attached Page A," no additional pages appear to have been attached to the application. On July 20, 2022, the State made its Return and Motion for More Definite Statement, claiming it had reached out to the Bamberg County Clerk of Court, who confirmed that no attachments were submitted with the application. Subsequently, on January 13, 2023, Applicant filed an amended PCR application, raising the following grounds:

1. Ineffective assistance of counsel of Charles David Hayes:
 - a. Failing to object to the underlying warrants as falsified.
 - b. Failing to object to malicious prosecution.
 - c. Failing to object to violation of due process.
 - d. Failing to object to perjury by a witness.

Applicant also requested leave to amend his application to conform to the evidence presented at the evidentiary hearing. Based on the original and amended applications and the testimony presented at the hearing, the Court interprets the following issues to have been raised:

1. Ineffective Assistance of Counsel
 - a. Failure to Challenge Arrest Warrants, Malicious Prosecution, and Perjury Based on the Testimony of Lieutenant Laquana Linder;
 - b. Failure to Object to Authentication of Jail Phone Call;

- c. Failure to Present Medical Evidence;
- d. Failure to Challenge LWOP Sentence; and
- e. Failure to Adequately Move for a Directed Verdict.

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. Before the Court are the original and amended applications for post-conviction relief, Applicant's records from the South Carolina Department of Corrections, the records of the Bamberg County Clerk of Court concerning the subject conviction, the records of Applicant's trial, and Applicant's appellate records. After hearing the testimony presented and considering the legal arguments and pleadings, this Court finds all of Applicant's allegations 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:

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), SCRPC. Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 687; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its

“reasonableness under prevailing professional norms.” *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Id.* (citing *Strickland*, 466 U.S. at 690). “When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” *Yarborough*, 540 U.S. at 6; *see also* *Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”).

Second, counsel's deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 694). “This does not require a showing that counsel’s actions ‘more likely than not altered the outcome,’ but the difference between *Strickland*’s prejudice standard and a more-probable-than-not standard is slight and matters ‘only in the rarest case.’” *Harrington*, 562 U.S. at 111–12 (quoting *Strickland*, 466 U.S. at 697). “The likelihood of a different result must be substantial, not just conceivable.” *Id.* at 112.

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on

the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

Failure to Object to Falsified Arrest Warrants/Malicious Prosecution/Perjury

Applicant contends Counsel was ineffective for failing to object to the arrest warrants, which Applicant contends were based upon false statements by Lieutenant Laquana Linder. Lieutenant Linder had testified at Applicant's trial that, while investigating the burglary, she spoke to Applicant, who confessed to her that he had entered the victims' home and taken their property. Applicant claims Lieutenant Linder's account was false and that, as a result, he was prosecuted without probable cause. Applicant also contends Linder's testimony at his trial was perjured, and Counsel should have objected on that basis and attacked Linder's credibility. The Court finds these allegations are without merit.

Prior to Applicant's trial, Counsel made a *Jackson v. Denno* motion in an attempt to keep out any evidence of Applicant's confession to Lieutenant Linder. (R.pp.8-35). Linder testified that, while she was doing a routine patrol, Applicant approached her vehicle and said, "Hey, my sister told me you needed to talk to me." (R.p.12, line 17-p.13, line 3). Linder agreed to talk to him, and Applicant told her that the victims of the burglary owed him \$3000 and refused to pay, so he went to their house "and took what was his." (R.p.14, line 24-p.15, line 20). After Linder had finished testifying, Applicant took the stand and denied ever having such a conversation with Linder. (R.p.32, lines 12-20). Ultimately, the trial court denied Counsel's motion, finding that Applicant's confession was voluntary. (R.p.35, lines 11-17).

Linder testified about Applicant's confession during the State's case-in-chief. (R.p.158, line 19–p.159, line 6). Counsel objected, renewing his objection based on the voluntariness of the statement and also objecting that the references to the money owed to Applicant by the victims implied Applicant was a drug dealer and that the statement did not identify the victims by name. (R.pp.155–57). The trial court overruled the objections. (R.pp.156–57). Applicant did not testify before the jury.

At the evidentiary hearing, Applicant again claimed Linder was lying about him confessing to her. He also argued Linder should have performed more investigation, including talking to the victims and other witnesses, before seeking a warrant. Applicant argued Counsel was deficient for failing to attack Linder's credibility on the ground she did not question other witnesses.

Counsel testified at the evidentiary hearing that Applicant kept changing his story as to whether he had ever had a conversation with Lieutenant Linder. He testified that he discussed Linder's story with Applicant several times and told him Linder's credibility was a jury issue.

The Court finds Counsel's testimony credible, and Applicant's testimony not credible, as to this issue. As for the malicious prosecution and falsified warrant issue, the Court finds that Applicant has failed to prove Lieutenant Linder obtained the warrant on false pretenses. Linder's account of Applicant's confession, which was highly detailed and consistent from the *Jackson v. Denno* hearing to the State's case-in-chief, was only contradicted by Applicant's own self-serving testimony. Applicant has the burden of proving his PCR allegations by a preponderance of the evidence. *Butler*, 286 S.C. 441, 334 S.E.2d 813; Rule 71.1(e), SCRPC. The Court finds Applicant's bare denial that the conversation between Lieutenant Linder and himself ever took place is not credible and does not meet his burden of proof. As Applicant has failed to show that there was any meritorious objection Counsel could have made regarding his prosecution or

warrants, the Court finds Counsel was not ineffective. Therefore, Applicant's allegations related to malicious prosecution and falsified warrant are denied and dismissed with prejudice.

As to the allegation that Counsel failed to effectively challenge Linder's supposed perjury, the Court again finds that Applicant has not met his burden of proving that Linder's testimony was false. However, Counsel expended considerable effort in trying to exclude the evidence of Applicant's confession, first by a *Jackson v. Denno* challenge and then based on prior bad acts and lack of explicit connection to the victims. The transcript reveals that Counsel also attacked Linder's credibility during closing arguments to the jury based on the lapse of time between the confession and Linder's decision to seek a warrant:

A month goes by from this alleged confession and there's no warrant. Why? . . . And then if you get a confession, why not cuff him right there on the spot, take him in, and get the warrant. Why wait that month? Well, it's one or two things: it either didn't happen or she didn't believe him.

(R.p.223, lines 4-6; p.230, lines 2-9). Therefore, the Court finds Counsel adequately challenged the truth of Linder's testimony during Applicant's trial. Accordingly, Applicant has failed to prove either deficiency or prejudice as to this allegation, and this claim is denied and dismissed with prejudice.

Failure to Object to Authentication of Jail Phone Call

At the evidentiary hearing, Applicant argued Counsel was ineffective for failing to challenge the admissibility of a recorded jail phone call as not being properly authenticated. Applicant asserted the officer who authenticated the phone call did not know Applicant and, therefore, could not have properly identified Applicant as the person who made the call. The Court finds this allegation is without merit.

At Applicant's trial, the State sought to introduce a recording of a phone call Applicant

made from jail in which Applicant stated law enforcement could not have found his fingerprints at the crime scene because he was wearing gloves. (R.p.161, line 3–p.164, line 10). Counsel objected that the recording had not been properly authenticated. (R.p.165, lines 18–19; p.168, line 20–p.169, line 1). The trial court overruled the objection, and the State elicited from Lieutenant Linder that she recognized the voice on the phone call as belonging to Applicant. (R.p.169, lines 2–7). The State also elicited from Chief Deputy Ben Hay that every recorded phone call at the jail placed by an inmate is connected to that inmate’s account number and four-digit PIN, and the phone call in question was associated with Applicant’s PIN number. (R.pp.190–97). On cross-examination, Counsel elicited from Hay that inmates sometimes swap PIN numbers. (R.p.201, line 25–p.202, line 9). Counsel argued to the jury in closing that Hay’s identification of Applicant based on his four-digit PIN was unreliable because “PIN numbers get taken, used, swapped . . . You can’t say who’s making the call.” (R.p.226, line 14–p.227, line 1). He further argued Linder’s identification of Applicant’s voice on the recorded call was unreliable because she did not have sufficient contact with Applicant to recognize his voice. (R.p.227, line 13–p.229, line 6).

The transcript reflects that Counsel *did* object to the authentication of the phone call. Moreover, after Counsel’s objection was overruled by the trial court, Counsel continued to attack the identification of Applicant as the caller through cross-examination and argument. The Court finds Applicant has not met his burden of proving Counsel was deficient as to this allegation.

In addition, although Applicant claims Linder could not have recognized his voice because he never spoke to her, the Court once again finds Applicant’s self-serving testimony on this point not credible. Furthermore, Linder’s knowledge of Applicant’s voice would not affect the method of authentication Hay employed: connecting the phone call to Applicant’s PIN number. Applicant has provided no explanation as to how this method of authentication was unreliable or could have

supported a meritorious objection. Therefore, Applicant has not met his burden of proving prejudice either. Accordingly, this allegation is denied and dismissed with prejudice.

Failure to Present Medical Evidence

At the evidentiary hearing, Applicant testified he was recovering from injuries due to an ATV accident at the time the burglary occurred. He claimed his arm was immobilized in a sling and he needed his girlfriend's help even to feed himself; therefore, he argues he could not have carried away a 62" TV as depicted on the surveillance video. Applicant claims Counsel was ineffective for failing to introduce evidence, such as medical records, that would have established Applicant's disability at the time of the crime. The Court finds this allegation is without merit.

Counsel testified he investigated Applicant's medical records and decided they did not support Applicant's claim that he was incapacitated at the time of the crime. Counsel believed the dates did not line up. Counsel also noted that, when Counsel met Applicant in jail, Applicant was fine and did not have a sling or brace on. Counsel testified he spoke to Applicant's sister and girlfriend, both of whom said Applicant was lying and they were not going to perjure themselves on his behalf.

The Court finds Counsel's testimony credible, and Applicant's testimony not credible, as to this issue. Counsel took reasonable steps to investigate Applicant's injury as a potential defense and, based on inconsistencies between Applicant's story and the witnesses' accounts and medical evidence, reasonably decided not to pursue that defense. Furthermore, Applicant has not provided the medical records or witness testimony to substantiate his claim that the evidence would have been favorable to him. Therefore, the Court finds Applicant has not met his burden of proving either deficiency or prejudice as to this allegation, and this claim is denied and dismissed with prejudice.

Failure to Challenge LWOP Sentence

At the evidentiary hearing, Applicant claimed his due process rights were violated because the LWOP sentence he received was harsh. He testified he was not aware he could be sentenced to LWOP for burglary based on the strike rule. However, he admitted the State had served him with LWOP notice, and he remembered having a discussion about the strike rule.

Counsel testified he discussed the strike rule in his first meeting with Applicant. In addition, the transcript reflects that, before Applicant's trial began, the solicitor informed the trial court that both Applicant and Counsel had been served with LWOP notice, and he stated Applicant was offered a negotiated plea for an aggregate sentence of 17 years that would expire once the trial began. (R.p.5, lines 13-25). The trial court asked Applicant if he heard what the solicitor just said, and Applicant replied in the affirmative. (R.p.8, lines 1-3). The trial court then asked Applicant whether he wanted more time to discuss the matter with Counsel, and Applicant responded, "No, sir . . . I'll go to trial." (R.p.8, lines 17-21).

The Court finds Applicant was properly served with LWOP notice and his sentence does not violate due process. The Court also finds Applicant has not met his burden of proving Counsel was ineffective for failing to object to the LWOP sentence. Applicant has not articulated any legal or factual argument that the strike rule should not apply in his case. Therefore, the Court finds this allegation is meritless and must be denied and dismissed with prejudice.

Failure to Adequately Move for a Directed Verdict

Finally, Applicant claims Counsel failed to obtain a directed verdict where the State did not put up any evidence. The Court finds this allegation is without merit. The State put up substantial evidence of Applicant's guilt, including a surveillance video of the burglary, Lieutenant Linder's testimony about Applicant's confession, and the incriminating phone call Applicant made

from the jail. There was no basis for making a directed verdict motion in this case. Counsel testified he believed the State had presented sufficient evidence to create a question of fact for the jury, and the transcript reveals that Counsel ably attacked the State's evidence through cross-examination and argument. The Court finds Applicant has failed to prove either deficiency or prejudice as to this allegation, and this claim is, therefore, denied and dismissed with prejudice.

[conclusion and signature on following page]

CONCLUSION

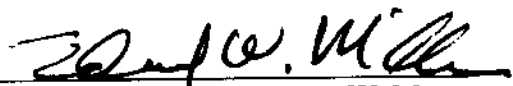
Based on the foregoing, this Court finds Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Accordingly, this application must be denied and dismissed with prejudice.

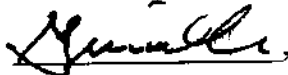
Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. *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 PCR application is denied and dismissed with prejudice; and
2. Applicant shall be remanded to the custody of the State.

AND IT IS SO ORDERED this 19 day of February, 2024.


THE HONORABLE EDWARD W. MILLER
Presiding Judge
Second Judicial Circuit

, South Carolina