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**Apr 22 2024**

**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT  
APPEAL FROM ALLEDALE COUNTY  
Court of Common Pleas  
The Honorable Roger Young, Sr., PCR Action Judge  
2021-CP-03-00176

BOBBY JONES, #37012,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

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**NOTICE OF APPEAL**

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Bobby Jones 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 April 15, 2024. Applicant received notice of the judgement on April 15, 2024.

/s Chelsey F. Marto  
Chelsey F. Marto, Esquire  
Attorney for the Applicant  
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STATE OF SOUTH CAROLINA  
COUNTY OF ALLENDALE

**FILED FOR RECORD**

IN THE COURT OF COMMON PLEAS  
FOR THE FOURTEENTH JUDICIAL CIRCUIT

2024 APR 15 A 11:10

Bobby Jones, Sr., SCDC #377012,

Case No. 2021-CP-03-00176

ELAINE SABB  
CLERK OF COURT  
ALLENDALE COUNTY, S.C.

**ORDER OF DISMISSAL**

v.

State of South Carolina,

Respondent.

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Bobby Jones, Sr. on September 13, 2021. On November 27, 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 Danielle Dixon represented Respondent. Applicant testified at the hearing along with trial counsel Michael R. Culler, Jr. and Glen Walters, Sr., Esquires. Applicant also called as character witnesses his wife Brenda Jones; his niece Pamela Smith; and Pamela's husband Craig Smith. Following a thorough review of the records before this Court 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 twelve-year sentence. In July 2018, the Allendale County Grand Jury indicted Applicant for second-degree criminal sexual conduct (CSC) with a minor (2013-GS-03-00039). On July 9, 2018, Applicant proceeded to a jury trial before the Honorable Brooks Goldsmith. Glenn Walters, and Michael R Culler, Jr., Esquires, represented Applicant. Assistant Solicitors Rebekah Luttrell

and Leigh Staggs prosecuted the case. Following a four-day trial, the jury returned a verdict of guilty. Judge Goldsmith sentenced Applicant to twelve years' imprisonment.

Applicant filed a timely notice of appeal, which was perfected by Appellate Defender Adam Sinclair Ruffin. On appeal, Applicant argued the trial court erred in:

- 1) Granting the State's motion to quash the jury following the State's challenge pursuant to Batson v. Kentucky; and
- 2) Qualifying Sitha Patel as an expert in the field of "child sexual abuse dynamics."

The Court of Appeals affirmed. State v. Jones, 2021-UP-258 (Ct. App. filed July 7, 2021). The remittitur was sent September 8, 2021.

#### TESTIMONY PRESENTED AT TRIAL

Victim is Applicant's stepdaughter. According to trial testimony, Victim lived with her mother and Applicant when she was fourteen. At some point in 2013, Victim disclosed to Nicole Smith that Applicant had touched her. (R. 175).

In February 2013, Carolyn Chess, a substitute teacher, overheard Victim discussing her sexual activity with Applicant. (R. 195). Chess reported the accusations to the guidance office.

On March 4, 2013, school counselor Pamela Kinard, school nurse Kimberly Solomon, and school resource officer Samuel Holmes met with Victim. (R. 111, 186, 210). That same day Victim provided two written statements. (R. 537-39). In her first statement, Victim disclosed that she and Applicant "did it," and Victim's mother had confronted Applicant about the disclosure, prompting Applicant to "almost kill[] himself." (R. 537). Victim gave a second more detailed statement to Sheriff Tom Carter disclosing that one night after Christmas, Applicant "put his penis inside me." (R. 538-39).



When Applicant was confronted later that day about the accusations, Applicant told Sheriff Carter that he and his wife had concerns about Victim masturbating with a magic marker. Because of their concerns, Applicant told Carter that he bought Victim a vibrator and showed her how to use it. (R. 74, 319-20).

Applicant also spoke with DSS employee Mary Carter and told her that he showed Victim how to use the vibrator while her underwear and pants were pulled down. (R. 336). The following day, Applicant again disclosed to Carter that he assisted Victim with the vibrator and specified that he used his hand to control the vibrator rather than Victim using the vibrator herself. (R. 341). On a subsequent date, Carter visited Applicant's home and Applicant showed her where he and Victim were sitting when he used the vibrator. (R. 343).

On March 26, 2013, Victim met with SLED agent Richard Johnson and recanted her prior accusations. (R. 224, 540-41). Victim told Johnson that she used the vibrator on herself, and the only time Applicant touched her was when he touched "the top of my chest." (R. 540-41).

At trial Victim testified for both the State and Applicant. When the State called Victim to testify, she claimed to remember very little and answered most questions with "I don't recall." (R. 127-53). When Applicant called Victim to testify, she admitted she received a vibrator from Mother and Applicant. Victim testified she eventually told Smith about the vibrator, which prompted a rumor about her and Applicant. (R. 404-18).

Applicant testified in his defense and admitted to buying Victim a vibrator but denied showing her how to use it. (R. 439-40, 445). Applicant also denied having sex with Victim. (R. 441). Ultimately, the jury convicted Applicant of second-degree CSC with a minor. (R. 528).



CURRENT APPLICATION

On September 13, 2021, Applicant timely commenced this PCR action alleging:

1. Ineffective assistance of counsel;
  - a. Failure to investigate and prepare defense;
  - b. Failed to call witnesses;
  - c. Failure to move for a directed verdict;
  - d. Failure to object; and
  - e. Failure to file a direct appeal.

The State filed a return moving to dismiss Applicant's claim related to a direct appeal and requesting an evidentiary hearing on the remaining issues. On November 14, 2023, Applicant filed an amended application alleging counsel was ineffective for:

1. Failing to properly communicate with Applicant about his case;
2. Failing to call Applicant's witnesses to testify at trial;
3. Failing to properly prepare Applicant to testify at trial;
4. Failing to inform Applicant of the State's witness list and what their testimonies would roughly consist of;
5. Failing to discuss a time-served plea offer with Applicant;
6. Failing to assert a proper defense;
7. Failing to discuss defense and trial strategy with Applicant;
8. Inadequate preparation time;
9. Failing to meet with Applicant enough;
10. Failing to investigate the State's witnesses and what they would testify to at trial;
11. Failing to strike a juror in the second round of jury selections that he struck the first time;
12. Failing to mitigate the sentence by highlighting the role Applicant played in the community prior to being charged.

At the evidentiary hearing, Applicant proceeded on the allegations in his amended application.



### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Allendale County Clerk of Court records of the underlying conviction; Applicant's records from the South Carolina Department of Corrections; Applicant's appellate records, including the trial transcript; and the records of the current PCR action. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. After a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of fact and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

#### *Ineffective Assistance of Counsel*

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). In a PCR action, an applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When the application alleges ineffective assistance of counsel, the applicant must prove "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, 466 U.S. 668. 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, 466 U.S. 668. First, an applicant must prove counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, courts measure 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 an 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). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, a PCR applicant must prove that counsel’s deficient performance prejudiced the 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.

*Failure to communicate<sup>1</sup>*

Applicant first contends counsel was ineffective for failing to properly communicate with Applicant about his case, failing to inform Applicant of the State’s witness list and what their testimonies would roughly consist of, failing to discuss defense and trial strategy with Applicant, and failing to meet with Applicant enough. This Court finds Applicant has not shown counsel was ineffective in this regard.

At the PCR hearing, Applicant testified trial counsel “did nothing.” He stated they met ten times during the five years they represented Applicant but did not discuss trial strategy or his defense. He also stated he did not know what evidence the State had or who they would call as witnesses. Applicant averred he did not have anyone to advocate for him.

Michael Culler testified he assisted Glen Walters with the case and sat second chair. Although he was not involved in every conversation Walters had with Applicant, Culler was involved in the “vast majority” of them. Culler testified they discussed witnesses, trial procedure,

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<sup>1</sup> This section addresses allegations one, four, seven, and nine of Applicant’s amended application.

and the State's evidence, and he had no concerns about Applicant's ability to understand the conversations. Although he did not specifically recall discussing the State's witness list, he stated that was something he would generally do as part of his practice. Culler testified Applicant was eloquent and intelligent and asked a lot of questions. He averred the case "dwindled" five years due to Applicant's "choreography."

Walters testified he met with Applicant ten to twelve times and also met with his family—including Victim and Applicant's wife—and visited Applicant's church. He stated they discussed the facts and the State's evidence, and he provided a copy of discovery to Applicant. Walters testified they had candid conversations and explained the strengths and weaknesses of the case with Applicant. He stated they also discussed the State's witness list. Walters testified their biggest hurdle was Applicant's prior admission that he had purchased a dildo for Victim and shown her how to use it. He averred he and Culler were brutally honest with Applicant and broke down every aspect of the case, and Applicant was informed, aware, and knew what was going on. Walters testified they discussed trial strategy five to six times.

This Court finds Culler and Walters' foregoing testimony credible. This Court further finds that based on the foregoing credible testimony, Culler and Walters communicated extensively with Applicant about this case, informed him of the State's witness list and what their testimony would consist of, advised him of the State's discovery, thoroughly discussed defense and trial strategy with Applicant, and met with him sufficient times. Applicant has not set forth what more counsel should have discussed with him and thus did not prove deficiency. Likewise, Applicant has not shown how further discussions would have reasonably changed the outcome, and thus did not prove prejudice. Based on the foregoing, this claim is denied.



*Failure to call witnesses<sup>2</sup>*

Applicant next contends counsel was ineffective for failing to call witnesses to testify on his behalf at trial. This Court finds Applicant has not shown counsel was ineffective in this regard.

At the PCR hearing, Applicant testified he had twenty witnesses he wanted counsel to contact, but counsel did not contact them. Culler testified they discussed character witnesses with Applicant, but he did not believe any of them were really helpful. He recalled they probably explained to the jury Applicant's role in the community, but Applicant's character could not get around the facts of the case. Ultimately Culler believed Applicant thought his community status would get him acquitted, and Applicant could not grasp the reality that he could be convicted. Walters recalled meeting with Victim and Applicant's wife. He testified that their understanding was Victim would testify that Applicant bought her the dildo but did not use it with her. At trial, however, she repeatedly testified "I do not recall." Walters testified he also visited Applicant's church and spoke to people at the church.

Applicant called three character witnesses at the PCR hearing. Pamela Smith, Applicant's niece, recalled that her daughter (who testified at trial) heard a rumor about Victim and Applicant, which prompted Pamela to ask Applicant about it. However, Pamela did not speak to Victim about it. Pamela stated she had known Applicant all her life and could have testified about his extensive role in the community, but counsel never asked her to testify. She stated Applicant worked with females and was around children all the time. However, this was the first time this came out in their family. Pamela acknowledged she did not live with Applicant, did not know what went on behind closed doors, and was not always around when Applicant was with children.

Brenda Jones, Applicant's wife and Victim's mother, testified Victim would have told her

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<sup>2</sup> This section addresses allegation two of the amended application.



if something happened. She stated she would have testified at trial that she knew Applicant and he would not have done anything. Jones believed Applicant was innocent.

Craig Smith, Pamela's husband, testified he was not asked to testify. He stated he had been a law enforcement officer for twenty-five years and could have testified he knew Applicant from school, Applicant had been his coach, and he saw Applicant as a good father figure. Craig acknowledged he did not live with Applicant.

Initially, this Court finds Culler's and Walker's foregoing testimony credible. This Court finds that based on Walter's testimony about meeting with Victim, Jones, and church members, counsel conducted a reasonable investigation into character witnesses and was not deficient. Further, this Court finds Culler articulated a valid strategy in not calling any additional character witnesses in that they were not helpful. Notably, evidence of Applicant's good character was introduced through many of the State's witnesses, including Minor 2, who testified Applicant was her pastor (Tr. 225); school counselor Pamela Kinard, who testified Applicant did a lot of work with the students through "an after-school mentoring program and was very well—highly thought of and very respected within [the] school" (Tr. 240); substitute teacher Carolyn Chess, who testified she knew Applicant and did not believe he would have done what Victim said he did (Tr. 246, 249); school nurse Kimberly Solomon, who testified she frequently saw Applicant at school and was told "he had a program at his church where he mentored several students" (Tr. 260); Sheriff Tom Carter, who considered Applicant a friend and testified Applicant had school and church programs and worked with children, no one had ever previously made allegations against Applicant, and Sheriff Carter had reservations when Victim first disclosed the abuse because of who Applicant was (Tr. 368-70, 373-74); and Victim herself, who testified Applicant was the pastor of her church. (Tr. 180-81). Applicant likewise testified extensively about his role in the

community, which was never disputed at trial. (Tr. 482-87, 502-03). Based on the foregoing, counsel's decision to not call further character witnesses was reasonable under prevailing professional norms, and Applicant did not prove deficiency.

Likewise, Applicant did not prove prejudice. Although he presented three character witnesses at the PCR hearing, it is not reasonably likely the outcome would have been different had those witnesses testified at trial. Critically, the character witnesses at the PCR hearing presented testimony that was cumulative to what was already before the jury, and Applicant's role in the community involving being a pastor and mentor for children was not disputed at trial. Thus, it is not reasonably likely the outcome would be different had counsel presented these additional witnesses, and this claim is denied.

*Failure to prepare Applicant to testify<sup>3</sup>*

Next, Applicant contends counsel was ineffective for failing to properly prepare Applicant to testify at trial. This Court finds Applicant has not shown counsel was ineffective in this regard.

At the PCR hearing, Applicant testified he was not prepared to testify. He stated he was told he would *not* have to testify, but he learned an hour before testifying that he would have to testify, and he was forced to testify. Applicant explained his role in the Allendale community, including the church he developed and his community service. He averred that if his good deeds had been known, he would have been acquitted. He admitted he purchased a dildo for Victim.

Culler testified they discussed with Applicant that it was his right to testify. Walters testified Applicant always admitted to buying the dildo, and he had previously admitted to using the dildo on Victim. He stated that every time they discussed his testimony, Walters "tore [Applicant] apart." Walters averred Applicant was well prepared.

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<sup>3</sup> This section addresses allegation three of the amended application.



This Court finds credible Culler and Walters' foregoing testimony. This Court further finds not credible Applicant's testimony that he was forced to testify, and he learned only an hour before testifying that he would have to testify. Based on Walters' credible testimony that he "tore [Applicant] apart" to prepare him for cross-examination, this Court finds counsels' preparation of Applicant was not deficient. Likewise, Applicant did not set forth what more counsel should have done to prepare his testimony. Although Applicant believed he would have been acquitted if the jury had been aware of his good deeds in the community, this information was before the jury. Finally, Applicant was advised by the Court that it was his decision whether to testify, and Applicant relayed he understood. (Tr. 252-54). Ultimately it was Applicant's decision to testify, and this Court finds Applicant did not prove deficiency or prejudice in regard to counsels' preparation of his testimony. Thus, this claim is denied.

*Failure to discuss plea offer<sup>4</sup>*

Applicant next asserts counsel was ineffective for failing to discuss a time-served plea offer with Applicant, which Applicant would have accepted. This Court finds Applicant has not shown counsel was ineffective in this regard.

At the PCR hearing, Applicant testified counsel advised him about a plea offer and the judge told him to take the plea. Culler stated the State offered a plea to assault with no jail time, but it required Applicant to register on the Sex Offender Registry. He stated they discussed the offer with Applicant, but Applicant did not want to take it because he did not want to lose his status in the community. Culler recalled advising Applicant that this was not a good case for trial, but ultimately Applicant rejected the plea offer in court.

Walters testified solicitors do not generally like to try cases in Allendale county, and he

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<sup>4</sup> This section addresses allegation five of the amended application.

was able to work out a plea deal to assault. However, Applicant did not want to accept the offer because it required him to register on the Sex Offender Registry. He further testified Applicant believed Victim would recant at trial.

This Court finds Culler and Walter's foregoing testimony credible. Based on their testimony, this Court finds Culler and Walters did in fact convey the time-served plea offer to Applicant. Applicant himself acknowledged he was advised about a plea offer. Ultimately, this Court finds counsel relayed the offer to Applicant and were not deficient. Likewise, this Court finds Applicant ultimately rejected the offer because it required him to register on the Sex Offender Registry, and he did not want to lose his status in the community. Based on the foregoing, Applicant did not prove by a reasonable likelihood that he would have accepted this offer (especially when he rejected it in court). Thus, Applicant did not prove deficiency or prejudice, and this claim is denied.

*Failure to assert proper defense<sup>5</sup>*

Applicant contends counsel was ineffective for failing to assert a proper defense. This Court finds Applicant has not shown counsel was ineffective in this regard.

Applicant testified counsel did not prepare a defense. He stated Victim testified in family court that nothing happened.

Culler stated Applicant had admitted to DSS that he purchased the dildo for Victim. He testified Victim recanted her statement prior to trial, but at trial she repeatedly testified "I do not recall," which did not help their case. Walters recalled Applicant was primarily concerned about what Victim's testimony would be. He explained Applicant was the primary breadwinner of the family, and the allegations threatened the stability of Applicant's church. Walters met with Victim

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<sup>5</sup> This section addresses allegation six of the amended application.

and stated she recanted her prior statements to DSS, and they believed Victim would testify that nothing happened other than Applicant purchasing the vibrator. At trial, however, Victim repeatedly said, “I do not recall.” Walters averred that he and Culler had been played by Victim. He stated the impact of most of the State’s witnesses was minimal; it was ultimately Victim repeatedly saying “I do not recall” that devastated their case.

This Court finds counsel’s foregoing testimony credible. Further, this Court finds counsel’s strategy reasonable under prevailing professional norms and not deficient. Ultimately counsel had to work with the evidence they had—which included Applicant’s admission to DSS that he purchased and used the dildo on Applicant. Counsel testified they spoke to Victim and expected her to recant.<sup>6</sup> Applicant did not set forth a different strategy that would have likely been successful and thus did not prove deficiency or prejudice.<sup>7</sup> Thus, this claim is denied.

*Inadequate preparation time<sup>8</sup>*

Applicant contends counsel was ineffective because of inadequate preparation time before trial. This Court finds Applicant has not shown counsel was ineffective in this regard.

At the PCR hearing, Culler testified they had sufficient time to prepare the case. Likewise, Walters testified they had adequate time to prepare. This Court finds Culler and Walters’ foregoing testimony credible. Further, based on this Court’s review of the trial transcript, this Court finds counsel was adequately prepared for trial and performed reasonably under prevailing professional norms. Finally, Applicant did not clarify what additional preparation time would have yielded that

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<sup>6</sup> Victim *did* deny that Applicant showed her how to use the vibrator or touched her inappropriately. (Tr. 215-16, 462-63).

<sup>7</sup> Applicant *did* testify that his “good deeds” should have been presented to the jury. As noted, however, this Court finds Applicant’s good character in the community *was* before the jury, and Applicant did not present anything at the PCR hearing regarding his character that was not already before the jury.

<sup>8</sup> This section addresses allegation eight of the amended application.

would have reasonably changed the outcome of trial.<sup>9</sup> Thus, Applicant did not prove deficiency or prejudice, and this claim is denied.

*Failure to investigate State witnesses<sup>10</sup>*

Applicant asserts counsel was ineffective for failing to investigate the State's witnesses and what they would testify to at trial. This Court finds Applicant has not shown counsel was ineffective in this regard.

Culler testified he was aware of the State's witnesses ahead of trial and there were not any surprise witnesses. Likewise, Walters testified they reviewed discovery with Applicant and met with Victim. This Court finds counsels' foregoing testimony credible. This Court further finds counsel's investigation into the State's witnesses was reasonable under prevailing professional norms. Thus, Applicant did not prove deficiency. Likewise, Applicant did not set forth what a further investigation into the State's witnesses would have produced that would have reasonably changed the outcome of trial and did not prove prejudice. Thus, this claim is denied.

*Failure to strike juror<sup>11</sup>*

Applicant contends counsel was ineffective for failing to strike a juror in the second round of jury selections that he struck the first time. This Court finds Applicant has not shown counsel was ineffective in this regard.

After the jury was struck, the State raised a Batson challenge. In attempting to explain why he struck juror 158, a white female, counsel argued he struck her because she was a housewife. (Tr. 76-77). The Court accepted all of counsel's explanations for his strikes other than his

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<sup>9</sup> Again, Applicant's PCR testimony focused on his good character in the community and his belief that that should have led to an acquittal. However, the jury heard evidence of his good character at trial, and Applicant's role in the community was not disputed at trial.

<sup>10</sup> This section addresses allegation ten of the amended application.

<sup>11</sup> This section addresses allegation eleven of the amended application.



explanation for juror 158. (Tr. 77). Counsel attempted to argue a basis for striking a housewife. (Tr. 77-78, 81-82, 84-87). Ultimately the Court agreed with the State that counsel did not have an adequate basis for striking juror 158 and quashed the jury panel. (Tr. 87). Thereafter, when the jury panel was selected a second time, counsel did not ask to excuse juror 158.

At the PCR hearing, Applicant recalled counsel trying to explain why he struck the juror. He stated, however, that after the jury panel was quashed, the juror was called and counsel did not move to strike that juror the second time.

This Court finds Applicant did not prove counsel was ineffective for not moving to strike juror 158 when she was called during the second jury selection. Notably, counsel attempted to provide a race-neutral basis for striking juror 158 during the first selection, which the Court did not accept. If counsel was unable to provide a race-neutral basis for striking juror 158 during the first selection, it strains credibility to suggest he was deficient for not moving to excuse her during the second selection. Likewise, it is not reasonably likely the outcome would have been different had counsel moved to excuse juror 158 during the second selection. If counsel was unable to provide a race-neutral basis for striking her the first time, it is not likely he would have been able to provide a race-neutral basis for striking her the second time. Applicant did not set forth any further argument counsel should have made regarding juror 158 and thus did not meet his burden of proving deficiency or prejudice. Thus, this claim is denied.

*Failure to mitigate*<sup>12</sup>

Finally, Applicant contends counsel was ineffective for failing to mitigate the sentence by highlighting the role Applicant played in the community prior to being charged. This Court finds Applicant has not shown counsel was ineffective in this regard.

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<sup>12</sup> This section addresses allegation twelve of the amended application.

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At the PCR hearing, Applicant testified about his role in the Allendale community, including the church he created and the community service he performed. Culler acknowledged Applicant had done a lot for the Allendale community. He believed Applicant ultimately received a lenient sentence. Pamela testified she could have told the sentencing judge about all the things Applicant did in the community, but she did not know if that would have helped Applicant.

Initially, counsel *did* discuss Applicant's role in the community during mitigation. (Tr. 584-85). Although no one spoke on Applicant's behalf at sentencing, evidence of Applicant's good character was introduced through many of the State's witnesses at trial, including Minor 2, who testified Applicant was her pastor (Tr. 225); school counselor Pamela Kinard, who testified Applicant did a lot of work with the students through "an after-school mentoring program and was very well—highly thought of and very respected within [the] school" (Tr. 240); substitute teacher Carolyn Chess, who testified she knew Applicant and did not believe he would have done what Victim said he did (Tr. 246, 249); school nurse Kimberly Solomon, who testified she frequently saw Applicant at school and was told "he had a program at his church where he mentored several students" (Tr. 260); Sheriff Tom Carter, who considered Applicant a friend and testified Applicant had school and church programs and worked with children, no one had ever previously made allegations against Applicant, and Sheriff Carter had reservations when Victim first disclosed the abuse because of who Applicant was (Tr. 368-70, 373-74); and Victim herself, who testified Applicant was the pastor of her church. (Tr. 180-81). Applicant likewise testified extensively about his role in the community, which was never disputed. (Tr. 482-87, 502-03). The trial judge—who was present throughout trial—heard this testimony and had this information to consider during sentencing. Thus, this Court finds counsel's mitigation was reasonable within prevailing professional norms and not deficient. Further, this Court finds Applicant's character

witnesses presented testimony about Applicant's role in the community that was cumulative to trial testimony; thus, it is not reasonably likely the outcome would have been different had those witnesses spoken during sentencing. Finally, this Court notes Applicant received a twelve-year sentence on a charge that carries up to twenty years, and this Court agrees with counsel's PCR testimony that Applicant received a lenient sentence. Ultimately, Applicant did not prove deficiency or prejudice, and this claim is denied.

CONCLUSION

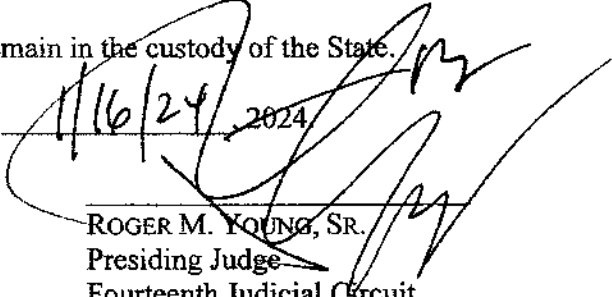
Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice.


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 on appeal. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). If Applicant wishes to appeal, 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.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED THIS 11/16/24 day of 2024

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

 \_\_\_\_\_, South Carolina