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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable Paul M. Burch, Circuit Court Judge

Case No. 2021-CP-18-01214

Edward Bonilla,Petitioner,

v.

State of South Carolina,Respondent.

NOTICE OF APPEAL

Petitioner, Edward Bonilla, appeals the order of the Honorable Paul M. Burch, dated March 21 2024, and filed May 3, 2024. Petitioner received written notice of entry of this order on May 5, 2024.

5/10, 2024



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STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

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

Edward Bonilla, SCDC #369324,)

Case No. 2021-CP-18-01214)

Applicant,)

ORDER OF DISMISSAL

v.)

State of South Carolina,)

Respondent.)
_____)

This matter is before the Court pursuant to an application for post-conviction relief (“PCR”) filed by Edward Bonilla (“Applicant”) on July 6, 2021. On February 5, 2024, an evidentiary hearing convened before the Honorable Paul M. Burch. Applicant was present and represented by Michael H. Lifsey, Esquire. Assistant Attorney General Bryan T. Hall represented Respondent. At the hearing, Applicant testified on his own behalf. Respondent called as witnesses Mark A. Leiendecker and Russell Hilton, Esquire (“Counsel”). 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 (“SCDC”) serving a life sentence. In December 2015, the Dorchester County Grand Jury indicted Applicant for murder (2015-GS-18-0606). The indictment arose from an incident in which the victim was last seen with Applicant on the night of her disappearance. On August 8-11, 2016, Applicant proceeded to a jury trial before the Honorable Doyet A. Early, III. Deputy Solicitor Donald Sorenson and Assistant Solicitor Ryan Templeton prosecuted the case. Applicant was initially

represented by Mark Leiendecker (“Leiendecker”), who was later relieved as counsel. Applicant was then represented by trial counsels Russell Hilton, Esquire, (“Counsel”) and Mandy Kimmons, Esquire. The jury convicted Applicant as indicted, and Judge Early sentenced Applicant to life without parole.

On August 22, 2016, a notice of appeal was filed on Applicant’s behalf. Applicant was represented on appeal by Chief Appellate Defendant Rober Dudek, who raised the following issues:

1. Whether the court erred by ruling appellant gave defense counsel his ‘informed consent’ to reveal the location where the decedent’s body was located.
2. Whether the court erred by ruling the Dorchester County search warrant for the Hyundai Sonata was not legal [sic] defective, and fruits of the search of it were admissible.
3. Whether the court erred by ruling that the Dorchester County search warrant for appellant’s Ford work van was not legally defective, and that fruits of the van were admissible.
4. Whether the court erred by refusing to grant the defense an *in camera* hearing on the qualifications of Investigator Jeff Scott to testify as a crime scene processing expert that the swabs he took from the automobile and the work van contained blood.

Following briefing and an oral argument, the South Carolina Court of Appeals affirmed Applicant’s conviction and sentencing, determining (1) the court properly found Applicant gave his informed consent to disclose the location of the victim’s body; (2) Applicant’s employer gave law enforcement consent to search and seize the Ford work van, and the automobile exception applies to both the Hyundai Sonata and Ford work van; and (4) the *in camera* hearing on Investigator Jeff Scott was not properly preserved for appeal. *State v. Bonilla*, 429 S.C. 253, 838 S.E.2d 1 (Ct. App. 2019), *cert. denied*.

CURRENT APPLICATION

Applicant timely commenced this PCR action on July 6, 2021, alleging he is being held in custody unlawfully for the following reasons:

- 1) Ineffective assistance of counsel for failing to investigate.
- 2) Newly discovered evidence
 - a. Great Seal
 - b. Fraud Upon the Court
 - c. Subject Matter Jurisdiction

Respondent filed a return and moved to dismiss the newly discovered evidence and subject matter jurisdiction allegations and moved for a more-definite statement on Applicant's ineffective assistance of counsel allegation. Applicant, through counsel, amended his application to add the following allegations:

Ineffective Assistance of Counsel

- a. Improperly disclosing the location of the victim's body without Applicant's informed consent. [Allegation only applicable to initial counsel, Mark Leiendecker]
- b. Failing to retain the services of an expert witness on the issue of blood splatter or forensic pathology.
- c. Failing to meet with Applicant a sufficient number of times prior to trial.
- d. Failing to move for a continuance to allow Applicant and trial counsel sufficient time to consult trial strategy.
- e. Failure to object to statements by the prosecutor and the trial judge that the jury's verdict must "speak the truth."

Applicant, through counsel, amended his application a second time to add the following allegations:

Ineffective Assistance of Counsel

- a. Failing to properly advise Applicant on his right to testify or not testify.
- b. Failing to properly challenge the admissibility of evidence seized and introduced against Applicant.

At the hearing, Applicant proceeded solely on the allegations contained in the first and second amendments to his application. Only those issues are before this Court for consideration.

Before this Court are the Dorchester County Clerk of Court records of the subject conviction; Applicant's records from SCDC; the appellate records; the trial transcript; and the records of the current PCR action.

TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

Informed Disclosure with Applicant's Initial Counsel

At the evidentiary hearing, Applicant averred his initial counsel, Mark Leiendecker ("Leiendecker") disclosed the location of the victim's body without Applicant's consent. Applicant testified he told Leiendecker how he met the victim, where they went, and where the incident occurred. Applicant testified Leiendecker said he could negotiate with the solicitor to have an autopsy of the victim's body done at the Medical University of South Carolina ("MUSC") instead of Newberry County because MUSC would do a better job investigating. Applicant testified that a week or so later, Leiendecker told him investigators were coming so Applicant could show them the location of the victim's body. Applicant testified he was reluctant and in shock but Leiendecker told him it was best to disclose the location of the victim's body so an autopsy could be performed. Applicant testified he does not recall discussing with Leiendecker the benefits and risks of disclosure, and Applicant did not authorize disclosure. Applicant testified Leiendecker was present during the disclosure. On cross-examination, Applicant testified he told Leiendecker that he killed victim by accident, and Leiendecker told him the best way to prove it was an accident would be to find the victim's body.

Mark Leiendecker testified Applicant did not tell the story in his testimony until the second (2nd) or third (3rd) meeting. Leiendecker testified Applicant's story was that he met the victim on a dating app, went to a party with her, and attempted to drive her home after she became intoxicated. Leiendecker testified Applicant told him that Applicant accidentally hit the victim with his car and tried to restrain her when she became upset. According to Leiendecker, Applicant said victim stopped moved in his arms, and he knew she had died. According to Leiendecker, Applicant maintained the incident was an accident, and Leiendecker testified he thought Applicant

was believable.

Leiendecker testified that he told Applicant that he would be convicted of murder regardless of whether the body was found and suggested to Applicant that the best way to corroborate Applicant's accident story was to disclose the location of the victim's body so an autopsy could be performed. Leiendecker testified he explained to Applicant that physical proof of injuries that corroborated Applicant's story could be advantageous by negating the murder charge. Leiendecker testified he also informed Applicant that the disclosure carried the risk of hurting Applicant's case if Applicant's story was not true. Leiendecker testified he discussed the disclosure with Applicant three (3) times. Leiendecker testified he previously had success in criminal cases in which a victim's body was disclosed and resulted in negation of homicide charges. Leiendecker testified that Applicant made the decision to disclose the victim's body, and Leiendecker would not lightly waive attorney client privilege without Applicant's consent. Leiendecker testified Applicant became upset when the victim's body was found and observations did not corroborate his accident story.

Trial Counsel's Representation

Applicant testified Russell Hilton ("Counsel") was appointed as counsel a month after the disclosure due to a conflict of interest that arose between Applicant and Leiendecker. Applicant testified he met with Counsel three (3) times prior to trial but did not feel it was sufficient time. Applicant testified he asked Counsel for a continuance, and Counsel declined, saying "they were ready to move." Applicant believed Counsel should have had more time to prepare. Applicant testified Counsel should have called a blood splatter expert testify but did not. Applicant testified he believed it was a mistake for him to testify at trial. Applicant testified he believed Counsel should have moved for a mistrial because of improper comments the trial judge made but Counsel

told him the comments occurred outside of the presence of the jury.

On cross-examination, Applicant testified he met with Counsel and reviewed discovery. Applicant testified he did not recall Counsel explaining his Fifth Amendment right to remain silent but believed the trial judge did explain the right to him, including the risk of being subject to cross-examination if Applicant chose to testify. Applicant admitted he testified at trial that after victim died in his arms, he put her body in his Ford work van and buried the body in the woods.

Russell Hilton (“Counsel”) testified he met with Applicant six (6) times prior to trial and did not need additional time to meet with Applicant. Counsel testified that he reviewed discovery with Applicant. Counsel testified the State’s evidence included several witnesses who testified victim was last seen with Applicant; victim’s DNA and blood in Applicant’s work van and Hyundai Sonata; Applicant’s cellphone GPS location data; a video of Applicant and the victim shortly before her death; and the disclosure of the victim’s body. Counsel testified he discussed defenses with Applicant including the defense of accident to reduce the murder charge to an involuntary manslaughter charge. Counsel testified he informed Applicant of his Fifth Amendment right to testify, and discussed whether Applicant would testify. Counsel testified that he advised Applicant that the only way to convince the jury the killing was an accident would be to testify.

Counsel testified he moved to suppress evidence seized from Applicant’s work van and Hyundai Sonata; the trial judge denied the motions, and the Court of Appeals affirmed. Counsel testified he did not believe it was necessary to call an expert for blood splatter because the State’s blood splatter expert’s testimony was inconsistent with testimony from the State’s forensic pathologist. Counsel testified he did not believe it was necessary to call a forensic pathologist because testimony from the State’s forensic pathologist was somewhat consistent with Applicant’s accident story. Counsel testified he did not want to call a different pathologist to testify because

he believed testimony from the State's expert was helpful to Applicant. Counsel testified he did not see a reason to object to the trial judge's truth-seeking language in rendering a true and just verdict and believed the trial judge's truth-seeking charge in the context of witness credibility was a true statement of the law.

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 carry 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(c), 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). *Strickland* requires that trial counsel be given leeway to make

reasonable strategic decisions. *Strickland*, 466 U.S. at 688-89 (stating “[n]o particular set of detailed rules for counsel’s conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant”). Judicial scrutiny of counsel’s performance must be highly deferential. *Id.*

To establish ineffective assistance of counsel, a PCR applicant must prove (1) counsel’s performance fell below an objective standard of reasonableness (i.e. deficient performance) 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. Applicant must prove prejudice by showing “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.

Disclosure of Victim’s Body

[Ineffective assistance of counsel allegation against Mark Leiendecker]

This Court finds Applicant has failed to prove Leiendecker was ineffective for disclosing the location of the victim’s body with Applicant’s informed consent. This Court finds Leiendecker exercised reasonable professional judgment and articulated reasonable strategic grounds for the disclosure as he believed an autopsy of the victim’s body could corroborate Applicant’s accident defense, and thus, negate the murder charge. This Court finds **credible** Leiendecker’s testimony that he explained to Applicant several times the advantages and risks of disclosing the location of victim’s body. This Court finds **credible** Leiendecker’s testimony that Applicant gave his informed consent to disclose the location of the victim’s body prior to the disclosure. This Court finds **credible** Leiendecker’s testimony that his belief in the advantage of the disclosure was based on him finding Applicant believable, his criminal trial experience, and the success of a previous

disclosure involving a former client.

Further, this Court finds Applicant failed to prove he was prejudiced by Leiendecker's disclosure of the victim's body with Applicant's informed consent. This Court finds **credible** Leiendecker's testimony that regardless of the victim's body being recovered, Applicant was likely to be convicted of murder because victim was last seen with Applicant shortly before her disappearance. Additionally, Applicant failed to prove a reasonable probability the result of trial would have been different without the disclosure because there was other physical evidence linking Applicant to the crime including the victim's blood and DNA in Applicant's work van, Applicant's cellphone location data, and video camera footage of Applicant and the victim shortly before her disappearance and death. Thus, Applicant failed to meet his burden.

[Applicant's remaining allegations of ineffective assistance of counsel are against trial counsel.]

Failure to Investigate

This Court finds Applicant failed to prove Counsel was ineffective for failing to investigate. This Court finds Counsel's investigation was reasonable under prevailing professional norms, and thus, was not deficient. Applicant failed to produce any evidence at the PCR hearing of what a further investigation would have uncovered, and thus, failed to prove prejudice in this regard. Thus, Applicant has failed to meet his burden.

Failure to Spend Adequate Time and Adequately Prepare

This Court finds Applicant failed to prove Counsel was ineffective for failing to meet with Applicant a sufficient number of times and failing to spend adequate time on his case. "[B]revity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation." *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (2012). Applicant must prove prejudice by showing evidence of how additional preparation or communication would have

resulted in a different outcome. *Id.*; see *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (application failed to show counsel was ineffective based on lack of preparation by neglecting to show evidence of what counsel failed to discover or what defenses counsel could have pursued had he more fully prepared for the case).

This Court finds **credible** Counsel's testimony that he met with Applicant a sufficient number of times and felt adequately prepared for trial. This Court also finds **credible** Counsel's testimony that he did not need additional time to prepare for trial. This Court finds **credible** Counsel's testimony that he reviewed discovery with Applicant and discussed trial strategies and defenses. This Court finds Counsel's preparation of this case was reasonable within prevailing professional norms, and thus, was not deficient. Further, this Court finds Applicant failed to prove prejudice because Applicant failed produce evidence of what Counsel could have discovered or what other defenses Counsel could have pursued if he had prepared more fully. Thus, Applicant failed to meet his burden.

Failure to Call Expert Witnesses for the Issues of Blood Splatter and Forensic Pathology

This Court finds Applicant failed to prove Counsel was ineffective for failing to call expert witnesses on the issues of blood splatter and forensic pathology. Counsel is not required to call every potential witness where counsel can articulate reasonable grounds not to. *Edwards v. State*, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011). If counsel makes such a reasonable decision, they will have fulfilled their duty owed to the client. *Id.* To prevail on a claim that counsel failed to interview or call witnesses, an applicant must prove counsel's inaction resulted in prejudice by producing witnesses at the PCR hearing to show a reasonable probability the result of the trial would have been different based on the witness's testimony. *Cf. Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995) (providing an applicant must produce witnesses at a PCR

hearing to support a claim that counsel was ineffective for failing to interview or call potential witnesses).

This Court finds Counsel articulated a reasonable strategic ground for not calling expert witnesses to testify to blood splatter and forensic pathology, and thus, was not deficient. This Court finds **credible** Counsel's testimony that he believed the testimony of Bradley Mullis, the State's expert witness on blood splatter, was inconsistent with the testimony of Nicholas Batalis, the State's forensic pathologist. This Court finds **credible** Counsel's testimony that he believed the testimony of the forensic pathologist was consistent with Applicant's accident story, and as a result, was helpful to Applicant.

Further, this Court finds Applicant failed to prove he was prejudiced by Counsel's failure to call expert witnesses in blood splatter and forensic pathology because Applicant failed to present evidence of what such witnesses would have testified to. As a result, Applicant failed to show a reasonable probability the result of trial would have been different if Counsel had called such expert witnesses. Thus, Applicant failed to meet his burden.

Failure to Object to the Trial Judge's Use of Truth-Seeking Language

This Court finds Applicant failed to prove he was prejudiced by Counsel's failure to object to the trial judge's use of truth-seeking language in charging the jury on its role as finder of fact and determiner of witness credibility. Jury instructions should be considered as a whole, and if as a whole they are free from error, any isolated portions which may be misleading do not constitute reversible error. *State v. Aleksey*, 343 S.C. 20, 26-27, 538 S.E.2d 248, 251-52 (2000) In *Aleksey*, the Supreme Court held a trial court's charge that the jury's objective was to "seek the truth" did not violate a defendant's due process rights when the charge was given in the context of the jury's role in determining witness credibility. *Id.* The Court determined the defendant was not prejudiced

by the charge because the truth-seeking language did not appear in either the reasonable doubt or circumstantial evidence charges and was prefaced by a full and proper instruction on reasonable doubt. *Id.* at 27-29, 538 S.E.2d at 251-53.

In Applicant's trial, the trial judge charged the jury as follows:

I cannot have any opinion. That is solely your job. Obviously, it is your job and duty to analyze the evidence and determine what evidence convinces you of it's truth.

Now, to carry out your job as judge of the facts, you must determine by necessity the credibility of the witnesses who have testified in this case.

...

You can also consider the appearance and manner of a witness while on the witness stand. So, it is up to you, the 12 of you collectively acting as one, to determine who is telling the truth; what is the truth. You determine the believability of the witnesses. And when you determine who is telling the truth, you take those true facts as you find them to be, and then you apply those facts to the law as I give it to you. And then you'll be in a position to render a true and just verdict.

(R. 611:25-612:6; 6:12:22-613:4).

This Court finds Applicant failed to prove he was prejudiced by Counsel's failure to object because the trial judge's charge was given in the context of the jury's role as finder of fact in determining witness credibility. Further, the trial judge's truth-seeking language was prefaced by a full and proper charge on the State's burden of proving Applicant's guilt beyond a reasonable doubt and did not appear in the court's reasonable doubt charge. (R. 608-610). Reviewing the jury charges and the record as a whole, Applicant failed to prove a reasonable probability the result of trial would have been different but for Counsel's failure to object.¹ Thus, Applicant failed to meet his burden.

Failure to Object to the Solicitor's Comments in Closing Argument

¹ Decided after Applicant's trial, *State v. Beaty*, 423 S.C. 26, 813 S.E.2d 502 (2018) held although a trial judge's opening remarks that jury was to "search for truth" and render a "just verdict" were improper, it did not warrant reversal because appellant did not show prejudice based on a review of the entire record.

This Court finds Applicant failed to prove he was prejudiced by Counsel's failure to object to the solicitor's comments in closing argument that "verdicta" means speak the truth. Improper comments by the prosecutor do not automatically require reversal if they are not prejudicial to the defendant. *Fortune v. State*, 428 S.C. 545, 550, 837 S.E.2d 37, 40 (2019). The relevant inquiry is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process. *Id.*

In closing, the solicitor stated, "[v]erdict comes from the Latin word 'verdicta' meaning to speak the truth. That will soon be your duty." (R. 557:5-6). The solicitor later stated, "[a]nd as you were told, you know, the verdict comes from a Latin word that ultimately means to speak the truth. Speak the truth." (R. 607:5-7).

This Court finds Applicant failed to prove he was prejudiced by Counsel's failure to object to the solicitor's comments because Applicant failed to prove a reasonable probability the result of trial would have been different but for Counsel's failure to object. Applicant testified at trial and admitted to restraining the victim, resulting in her death. (R. 478). This Court finds there was overwhelming evidence of guilt against Applicant: cellphone location data; video surveillance of Applicant and victim shortly before her disappearance; the victim's blood and DNA evidence in Applicant's work van and the Hyundai Sonata; and the testimonies of several witnesses who last saw victim with Applicant. This Court finds Applicant failed to prove the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process. Thus, Applicant failed to meet his burden.

Failure to Advise Applicant on Right to Testify

This Court finds Applicant failed to prove Counsel was ineffective for failing to advise Applicant on his Fifth Amendment right to remain silent or testify. This Court finds **credible**

Counsel's testimony that he informed Applicant of his right to remain silent or testify and discussed the decision with him. This Court finds **credible** Applicant's testimony that he believes the trial judge explained his Fifth Amendment right to remain silent. This Court finds **credible** Applicant's testimony that he made the decision to testify. Thus, Applicant failed to meet his burden.

Failure to Properly Challenge the Admissibility of Evidence Seized and Introduced

This Court finds Applicant failed to prove Counsel was ineffective for failing to properly challenge the admissibility of evidence seized and introduced against Applicant. This Court finds **credible** Counsel's testimony that he moved to suppress evidence obtained from the search of Applicant's work van and the Hyundai Sonata. This Court finds Counsel's conduct was reasonable under prevailing professional norms. Further, this Court finds Applicant failed to prove prejudice because the Court of Appeals affirmed the trial court's admission of the evidence. *See Millidge v. State*, 422 S.C. 366, 380, 811 S.E.2d 769, 800 (2018) (the proper inquiry for determining prejudice for failing to object is whether there is evidence in the record to support the trial court's finding, such that "an appellate court would necessarily have affirmed the trial court's ruling"). Thus, Applicant failed to meet his burden.

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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 (30) 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), SCRCR. 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 must be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 21st day of March, 2024.

Dorchester, South Carolina


PAUL M. BURCH
Presiding Judge
First Judicial Circuit