

RECEIVED

May 13 2024

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM COLLETON COUNTY
Court of Common Pleas
The Honorable Roger Young, Sr., PCR Action Judge
2017-CP-15-00958

ALBERT SIDERS, #262284,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Albert Siders 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 May 2, 2024.

Applicant received notice of the judgement on May 3, 2024.

/s Chelsey F. Marto
Chelsey F. Marto, Esquire
Attorney for the Applicant
The Law Office of Chelsey F. Marto, LLC
P.O. Box 8795
Columbia, SC, 29201
(864)-404-5583

Other Counsel of Record:
Bryan Hall, Esquire
Office of the Attorney General, State of SC
P.O. Box 11549
Columbia, SC, 29211-1549

STATE OF SOUTH CAROLINA)
 COUNTY OF COLLETON)
)
)
 Albert Siders, SCDC #262284,)
)
 Applicant,)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FOURTEENTH JUDICIAL
 CIRCUIT

Case No. 2017-CP-15-00958

ORDER OF DISMISSAL

COLLETON COUNTY
 COMMON PLEAS COURT
 2024 MAY - 27 PM 1:00

This matter is before the Court by way of an application for post-conviction relief (“PCR”) filed by Albert Siders (“Applicant”) on December 7, 2017. 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 Bryan T. Hall represented Respondent. During the hearing, Applicant testified on his own behalf and called as a witness David S. Matthews, Steven H. Knight, and Reed A. Evans. 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 life sentence. In March 2014, the Colleton County Grand Jury indicted Applicant for kidnapping (2014-GS-15-00245), armed robbery (2014-GS-15-00244), and possession of a weapon during the commission of a violent crime (2014-GS-15-00242). These charges arose from a February 21, 2014, incident in which Applicant robbed a gas station at gunpoint.

On April 20-22, 2015, Applicant proceeded to a jury trial before the Honorable Thomas Cooper, Jr. Assistant Solicitors Steven H. Knight and Reed A. Evans prosecuted the case. Applicant was represented by David S. Matthews, Esquire ("Counsel"). The jury convicted Applicant, and Judge Cooper sentenced Applicant to life imprisonment without parole. On May 4, 2015, Counsel filed a notice of appeal on Applicant's behalf. On appeal, Applicant was represented by Appellate Defender Laura R. Baer, who raised the following issue:

Whether the trial court erred in denying Sider's motion to relieve counsel and failing to advise Siders of his right to represent himself pro se?

On November 11, 2017, following briefing and without oral argument, the South Carolina Court of Appeals affirmed Applicant's conviction, finding the trial court did not abuse its discretion in denying Applicant's motion. *State v. Siders*, 2017-UP-429 (S.C. Ct. App. filed Nov. 15, 2017). The Remittitur was sent on December 4, 2017.

CURRENT APPLICATION

Applicant timely commenced this PCR action on December 7, 2017, alleging he is being held in custody unlawfully for the following reasons:

- 1) Prosecutorial Misconduct
 - a. Fraud upon the court.
 - b. Fabrication and tampering of evidence (video).
- 2) Ineffective Assistance of Counsel: failure to object and preserve for appellate review.

On October 26, 2018, Respondent filed its Return. On April 2, 2019, Applicant amended his application, raising the following additional issues:

- 1) Ineffective Assistance of Appellate Counsel: failure to argue meritorious issues on appeal.
- 2) Ineffective Assistance of Counsel
 - a. For stipulating to the admissibility of State's Exhibit 4 [video surveillance from the robbery].



- b. Failure to investigate and consult with an expert witness to determine whether State's Exhibit 4 had been tampered with or distorted.
 - c. Failure to present as a defense that Applicant was coerced into committing the robbery.
 - d. Failure to object to the court's jury charge for burden shifting.
- 3) Prosecutorial Misconduct
- a. Presenting video evidence that was not a true and accurate duplication of the original video recording. [State's Exhibit 4]

At the PCR hearing, Applicant proceeded *solely* on the following allegations:

- 1) Ineffective Assistance of Counsel
 - a. Stipulating the admissibility of State's Exhibit 4.
 - b. Failure to object to admission of State's Exhibit 4.
 - c. Failure to investigate and determine whether State's Exhibit 4 had been tampered with or distorted.
- 2) Prosecutorial Misconduct
 - a. Presenting video evidence that was not a true and accurate duplication of the original video recording. [States's Exhibit 4]

Before this Court are the Colleton County Clerk of Court records of the subject conviction; Applicant's records from the South Carolina Department of Corrections; the trial transcript; State's Exhibit 4 from Applicant's trial; and the records of the current PCR action.

TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant averred he was convicted based on fabricated evidence. Applicant testified a surveillance video that was played at trial (State's Exhibit 4) showed him pulling a gun on the store clerk. Applicant avers the video was fabricated and did not accurately depict what occurred. Applicant testified that during the robbery, he calmly held a BB gun but did not point it at the store clerk. Applicant testified he was a confidential informant for law enforcement, and a drug bust blew his cover. Applicant testified that his blown cover made him a target in the community, and he was forced by two men to commit the armed robbery. Applicant testified that he believed there was a conspiracy between Counsel and the solicitors, who were working together against him. Applicant testified the solicitors presented false

testimony. Applicant testified that he recalled the store clerk testifying at trial that Applicant pointed a gun at her. Applicant averred the store clerk was being untruthful in her testimony.

David S. Matthews ("Counsel") testified that he did the best he could in representing Applicant. Counsel testified he reviewed the surveillance video with Applicant. Counsel testified Applicant expressed his concern about the video being tampered with. On cross-examination, Counsel testified he did not think it was necessary to have an expert review the video because Applicant's contention was that he did not point the gun at the store clerk, but Applicant did not deny committing the robbery. Counsel testified that he explained to Applicant that, for the charge of armed robbery, the manner in which Applicant held the gun did not matter. Counsel testified he did not believe the solicitor had the ability to tamper with the video. Counsel testified he explained to Applicant that the best strategy for trial was to pursue the defense of duress since Applicant had already confessed to the robbery. Counsel testified he investigated Applicant's story that two men coerced him into committing the robbery but was unable to locate the men.

Steven H. Knight ("Knight") testified he was a solicitor for twenty-three (23) years, before retirement, and was the chief prosecutor. Knight testified he is familiar with the surveillance video in question. Knight testified that he did not tamper with the video and was unaware of anyone else tampering with the video. Knight testified the same video that was played at trial was the same video given to the solicitor's office by law enforcement. Knight further testified that he was unaware of any allegation of tampering until after Applicant filed a PCR action.

Reed A. Evans ("Evans") testified he was the second chair prosecutor in Applicant's case. On cross-examination, Evans testified that he has known and worked with Knight for approximately eight (8) years and has never known Knight to compromise prosecutorial ethics. Evans also testified he is unsure whether Knight could tamper with a video at all. Evans testified

A handwritten signature in black ink, appearing to be the initials 'RE' or similar, written in a cursive style.

he does not recall the video in question but did recall that the store clerk identified herself and Applicant in the video at trial.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the plea 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(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 State's Exhibit 4

This Court finds Applicant failed to prove Counsel was ineffective for failing to investigate State's Exhibit 4 and consult with an expert regarding whether it had been tampered with. A criminal defense attorney has a duty to conduct a reasonable investigation to discover all reasonably available evidence tending to rebut any aggravating evidence introduced by the State. *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). Counsel's duty to investigate is "limited to reasonable investigations." *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 597 (2007); *Strickland*, 466 U.S. at 691 ("counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary").

This Court finds **credible** Counsel's testimony that he reviewed all discovery materials in Applicant's case, including State's Exhibit 4, and did not believe the video had been altered. This Court finds Counsel articulated a reasonable strategic decision for not investigating the video as Counsel testified that he did not have any concerns about the authenticity of the exhibit. This Court finds Counsel's decision to not undertake an investigation into the surveillance video was reasonable under prevailing professional norms, and thus, was not deficient. Thus, Applicant did not meet his burden.

Failure to Object to Admission of State's Exhibit 4

This Court finds Applicant failed to prove Counsel was ineffective for stipulating to and failing to object to the admission of State's Exhibit 4. An applicant must prove both deficiency and prejudice to establish ineffective assistance of counsel for failing to object. *Millidge v. State*, 422 S.C. 366, 374, 811 S.E.2d 769, 800-01 (2018). This Court finds **credible** Counsel's testimony



that he reviewed the video and did not believe it had been altered. This Court finds Counsel articulated a reasonable strategic decision for not objecting to the admission of the video, believing the video was unaltered.

This Court also finds Applicant has failed to prove he was prejudiced by Counsel's failure to object to the video's admission. At trial, Jurnell Washington, the store clerk, testified that Applicant walked into the store, pulled out a gun, and asked for money. (Tr. 95). (Tr. 94-99). When asked at trial whether he committed the robbery, Applicant testified "I did." (Tr. 169:7-12). Regardless of the video, this Court finds there was other evidence of the armed robbery presented at trial for the jury's consideration. This Court finds Applicant has failed to prove prejudice by showing but for Counsel's failure to object to the admission of the video, there is a reasonable probability the outcome of the trial would have been different. Thus, Applicant did not meet his burden.

Prosecutorial Misconduct

The Due Process Clauses of the Fifth and Fourteenth Amendments provide that no person may be deprived of liberty "without due process of law." U.S. Const. amends V, XIV. When examining allegations of prosecutorial misconduct, the inquiry is whether the solicitor's conduct denied the defendant's due process right to a fair trial. *Riddle v. Ozmint*, 369 S.C. 39, 44, 631 S.E.2d 70, 73 (2006). It is Applicant's burden to prove actual prosecutorial misconduct. *Butler*, 286 S.C. at 442 (stating "the burden of proof is on the applicant to prove the allegations in his application").

This Court finds **credible** Knight's testimony that he did not tamper with or fabricate the video surveillance from the robbery, admitted at trial as State's Exhibit 4. This Court finds **credible** Knight's testimony that the video introduced at trial was the same video given to the solicitor's



office by law enforcement. This Court finds **credible** Knight's testimony that he is unaware of anyone tampering with it. This Court also finds **credible** Evans' testimony that, based on his experience with Knight, he has never known Knight to compromise prosecutorial ethics. This Court also finds **credible** both Counsel and Evans' testimonies that they did not believe Knight knew how to tamper with a video.

This Court has had the opportunity to review the surveillance video in question and finds the video's depiction of Applicant holding and pointing a gun at the store clerk is consistent with the store clerk's trial testimony that Applicant pulled out a gun and asked for money. (Tr. 95). Further, this Court finds the surveillance video in question is consistent with the store clerk's trial testimony in which she identified both herself and Applicant in the video. (Tr. 97-99). This Court finds Applicant has failed to prove the solicitor violated his due process right to a fair trial by tampering with, altering, or otherwise fabricating the video in any way. Thus, Applicant did not meet his burden.

[Space left blank intentionally. Conclusion follows on next page.]

Handwritten signature and initials. The signature is written in cursive and appears to be 'R. J. Knight'. Below it, there are initials 'R. J.' written in a stylized, blocky font.

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.

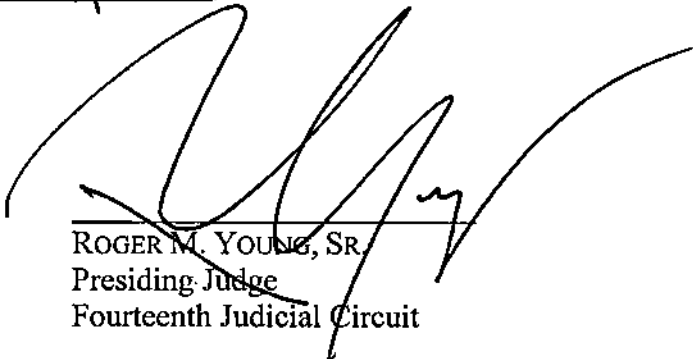
Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty (30) days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. *Austin 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.

THEREFORE, IT IS 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 ___ day of 4/22, 2024.

Chambers, South Carolina



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



ALAN WILSON
ATTORNEY GENERAL

April 29, 2024

The Honorable Patricia C. Grant
Clerk of Court - Colleton County
Post Office Box 620
Walterboro, South Carolina 29488-0028

Re: Albert Siders, #262284 v. State of South Carolina
Case No.: 2017-CP-15-00958

2024 MAY -2 PM 3:59

COLLETON COUNTY
COMMON PLEAS COURT

Dear Ms. Grant:

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 J. Hall
Assistant Attorney General

BTH/vh

cc: Chelsey F. Marto, Esquire