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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM LAURENS COUNTY
Court of Common Pleas
R. Scott Sprouse, Circuit Court Judge

Lower Case № 2021-CP-30-00479

Arthur L. Williams, #344402 ..... Appellant,

vs.

State of South Carolina ..... Respondent.

NOTICE OF INTENT TO APPEAL

Arthur Lee Williams appeals the Order of the Honorable R. Scott Sprouse dated April 9, 2024, and filed April 18, 2024, and the Order of Dismissal dated March 28, 2024, and filed April 18, 2024. Appellant received a copy of this decision on May 3, 2024.

May 17th, 2024

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STATE OF SOUTH CAROLINA COUNTY OF LAURENS	IN THE COURT OF GENERAL SESSIONS FOR THE EIGHTH JUDICIAL CIRCUIT
Arthur Williams, No. 344402, Applicant, vs. State of South Carolina, Respondent.	Case No.: 2021-CP-30-00479 **ORDER**

After careful consideration of the able argument and filings of Counsel and review of the record, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or fact not appropriately considered. Accordingly, Plaintiff's Amended Motion to Reconsider, pursuant to Rule 52, SCRCP, [1] is DENIED.

AND IT IS SO ORDERED.

R. SCOTT SPROUSE
Judge, Tenth Judicial Circuit

Oconee, South Carolina
April 9, 2024

[1] The Court, in its discretion, has determined this Motion on the filings, without oral argument, pursuant to Rule 52(c), SCRCP.

STATE OF SOUTH CAROLINA COUNTY OF LAURENS	)	IN THE COURT OF COMMON PLEAS FOR THE EIGHTH JUDICIAL CIRCUIT
Arthur Williams, #344402, Applicant,	)	Case No.: 2021-CP-30-00479
v.	)	**ORDER OF DISMISSAL**
State of South Carolina, Respondent.	)	

This matter comes before the Court by way of an application for post-conviction relief filed by Applicant Arthur Williams on May 21, 2021. The Court convened an evidentiary hearing into the matter on December 1, 2022. Applicant was present at the hearing and represented by C. Rauch Wise, Esquire. Assistant Attorney General Zachary W. Jones represented Respondent.

Testimony was taken from Ivan Toney, Esquire, who represented Applicant at his trial, and Victor Seeger, Esquire, who represented Applicant on direct appeal. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original trial transcript, the records of the Laurens County Clerk of Court regarding the subject convictions, Applicant's appellate records, and the pleadings. In addition, the Court considered a video recording that was introduced by the State at Applicant's trial. After reviewing all records and evidence before this Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief and, therefore, denies and dismisses this application with prejudice. The Court finds as follows:

I. Procedural History

In October 2015, the Laurens County Grand Jury indicted Applicant for Distribution of Crack Cocaine (2015-GS-30-1488). Applicant was represented by Ivan Toney, Esquire ("Trial Counsel"). Deputy Solicitor C. Dale Scott and Assistant Solicitor Margaret G. Boykin, of the

Eighth Circuit Solicitor's Office, prosecuted the case.

On May 24, 2018, Applicant proceeded to trial before the Honorable Donald B. Hocker, circuit court judge, and a jury. Applicant was found guilty as indicted, and Judge Hocker sentenced Applicant to twenty-five years' imprisonment. Applicant filed a timely notice of appeal.

An appeal was perfected on Applicant's behalf by Victor Seeger, Esquire ("Appellate Counsel"), of the South Carolina Commission of Indigent Defense. On appeal Applicant raised the following issue:

1. The trial judge erred in denying Applicant's motion to remove or strike the videotape of the drug buy after the State's main witness, who was the confidential informant in the case, contradicted himself on the stand and showed signs he was incompetent to testify.

On May 27, 2020, the South Carolina Court of Appeals issued an order affirming Applicant's conviction, finding Applicant's counsel failed to object to the informant's testimony or the admissibility of the videotape of the drug buy and therefore these issues are not preserved for appellate review. The Remittitur was issued on June 19, 2020.

II. Facts

On July 10, 2015, Officer Shane Prather of the Clinton County Police Department, with the help of confidential informant Sammy Anderson, executed a controlled purchase of cocaine base at 84 Ponderosa Lane in Laurens County. (Tr. p.49, line 23–p.50, line 10). Anderson was equipped with a video recording device and was given $100 to make a purchase of cocaine base from Applicant. (Tr. p.50, line 11–p.52, line 1; p.58, lines 6–11). Anderson was dropped off in the vicinity of the Ponderosa Lane address at 11:18 a.m. and was picked up by law enforcement after completing the purchase around 11:25 a.m. (Tr. p.51, line 14–p.52, line 17). Anderson gave law enforcement the suspected cocaine base, which was later tested by SLED and found to be one gram of cocaine base. (Tr. p.58, lines 12–23; p.215, line 10–p.216, line 21). Anderson was paid

$50 by law enforcement for assisting in the controlled buy. (Tr. p.65, lines 8–21; p.207, lines 14–20).

III. Current Application

Applicant timely commenced this PCR action on May 21, 2021. Applicant asserts he is being held in custody unlawfully, alleging:

1. Ineffective assistance of counsel:
   a. Counsel failed to properly preserve issues as to the video tape of the alleged transaction for appellate review.
   b. Counsel failed to object to improper bolstering as to the reliability of the informant in this case.
   c. Counsel failed to object to opinion testimony given by the officer in this case.
   d. Counsel failed to object to the opinion of the investigating officer as to the alleged drug transaction.
2. Ineffective assistance of appellate counsel:
   a. Appellate Counsel failed to brief on appeal an objection as to opinion testimony given by the investigating officer.
   b. Appellate Counsel failed to brief the issue when the reputation of Arthur Williams as a drug dealer was placed before the jury and objected to by defense counsel.

Applicant requests relief in the form of "Conviction reversed and new trial granted."

IV. Findings of Fact and Conclusions of Law

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, and weighed the testimony accordingly. Before the Court are Applicant's records from the South Carolina Department of Corrections, the transcript of Applicant's trial, the records of the Laurens County Clerk of Court regarding the subject conviction, Applicant's appellate records, and the application for post-conviction relief. This Court has reviewed the evidence submitted to it by the parties, the legal arguments made by the attorneys, and the pleadings. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented:

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Ineffective Assistance of Trial Counsel

Applicant's allegations of ineffective assistance of trial counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRCP. 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 686; *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. A reasonable probability is "a probability sufficient to undermine confidence in the outcome." *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 prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury." *United States v. Basham*, 789 F.3d 358, 371–72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

1a. Failure to preserve issues regarding video

Applicant argues Trial Counsel was ineffective for failing to preserve his motion to strike the video from evidence on the ground that the witness, Samuel Anderson, through whom the video was introduced, was incompetent. The Court finds this argument is without merit.

At Applicant's trial, Samuel Anderson testified that he bought drugs from Applicant under the supervision of law enforcement and recorded the transaction with a hidden camera. The DVD video depicting the transaction was introduced into evidence and published to the jury, without

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objection, as State's exhibit No. 13 after Anderson identified his initials on it and testified he had watched the DVD and confirmed that it accurately reflected the transaction that took place between him and Applicant.

Trial Counsel cross-examined Anderson about a head injury Anderson had received, his memory, his criminal record, his drug addiction, his ability to read, and his ability to see. Anderson admitted he had memory and vision problems and used crack cocaine extensively over his lifetime. On several occasions, Anderson became upset during questioning, interrupting Trial Counsel's questions and complaining about Trial Counsel "badgering" him.

At the beginning of the next day of trial, Trial Counsel moved for a mistrial and for the video to be stricken from the record. Trial Counsel argued Anderson was not competent to testify because his memory was poor, his vision was impaired, and his answers to multiple questions were contradictory. Trial Counsel admitted that he had not objected to the admissibility of the video at the time it was introduced because he did not realize the extent of Anderson's incompetency until he started cross-examining him, and he argued that Anderson's testimony on re-direct examination suggested coaching by the solicitor's office.

The trial court denied both motions, ruling that, although Anderson's testimony had been "somewhat outside the norm," he clearly answered that he could see the video being played on the monitor and identified the video as accurately depicting the transaction. The court ruled that the other issues mentioned by Trial Counsel went to Anderson's credibility, not his competency. The Court also noted that Officer Prather, who had testified earlier about setting up the controlled buy, was also able to authenticate the video because he took possession of it immediately after Anderson completed the transaction and got back in the officer's car.

After Applicant was convicted, he appealed on the ground the trial court erred in denying

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his motion to strike the video from evidence. The court of appeals affirmed, holding the issue was not properly preserved for appellate review because Trial Counsel expressly did not object to the introduction of the video and did not contemporaneously object to Anderson's testimony.

Applicant now argues Trial Counsel was ineffective for failing to preserve the issue. This Court finds Trial Counsel's conduct was not deficient. Although the court of appeals declined to address the issue, the trial court heard the motion and ruled on it. Applicant has presented no argument that the trial court's ruling was improper or that the court of appeals would likely have reversed it if the issue had been properly preserved. At the evidentiary hearing, Trial Counsel testified that Anderson's head had a visible deformation due to an attack with a hammer perpetrated by Applicant's associates. He stated Anderson was extremely stressed and terrified at trial. Nevertheless, Trial Counsel thought Anderson's testimony was "pretty good," and he made the motion to strike the video out of a desire to "just object to everything," rather than a subjective belief that Anderson was incompetent to authenticate the video.

The Court has reviewed the transcript of Anderson's testimony and can see no reason to believe the trial court's ruling on this issue would likely have been reversed on appeal. Despite Anderson's interruptions and occasional reluctance to answer Trial Counsel's questions, his responses concerning the authentication of the video were reasonably clear; he identified the DVD by his initials, confirmed that he had watched the video, and testified that it accurately represented his transaction with Applicant to purchase drugs. Furthermore, even if Anderson had been deemed incompetent to testify, the record supports the trial court's additional finding that the investigating officer who took possession of the video recording after Anderson returned from the controlled buy could have authenticated the video. Therefore, this Court finds Applicant has not met his burden of proving prejudice, and Trial Counsel was not ineffective as to this issue.

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1b. Failure to object to bolstering

Applicant argues Trial Counsel was ineffective for failing to object when Officer Veal testified that Anderson was paid more than a normal informant because he was an established informant and was reliable. Applicant contends this testimony constituted improper bolstering because it amounted to a statement that Veal believed Anderson. The Court finds this allegation is without merit.

The Court notes that Veal did *not* say he thought Anderson's testimony was credible; he merely stated he had worked with Anderson in the past and paid him more money than a normal informant because of his past reliability. Regardless, however, of whether Veal's testimony was improper, Trial Counsel articulated a valid strategic reason for not objecting to this portion of Veal's testimony: at the evidentiary hearing, Trial Counsel testified that he wanted evidence to come in that Anderson was being paid by law enforcement because it could support his argument to the jury that Applicant had a motive to lie. The Court finds Trial Counsel was not deficient as to this issue. More importantly, the Court finds that any minor effect Veal's testimony might have had on Anderson's credibility is negligible compared to the other evidence in the case, particularly the video depicting the drug transaction. Therefore, the Court finds Applicant has not met his burden of proving he was prejudiced by Trial Counsel's failure to object to Veal's statement.

1c, 1d. Failure to object to non-expert opinion testimony

Applicant argues Trial Counsel was ineffective for failing to object when Officer Veal gave his opinion that the video depicted Applicant distributing drugs to Anderson. The Court finds this allegation is without merit.

The record reflects that Trial Counsel *did* object to Veal's statement, but his objection was overruled. Nevertheless, a lay witness may properly testify to "opinions or inferences which (a)

are rationally based on the perception of the witness, (b) are helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) do not require special knowledge, skill, experience or training." Rule 701, SCRE. Here, Officer Veal was merely describing his opinion, rationally based on his perception of the controlled buy video, which was related to the determination of a fact in issue (namely, whether Applicant distributed drugs to Anderson), and which did not require special knowledge or skill to infer. Essentially, Officer Veal described what he had just watched on the courtroom television monitor. In addition, there was patently no prejudice because the jury was watching the same video at the same time and could come to their own conclusions about what the video depicted without any deference to Officer Veal. As Applicant has failed to prove any deficiency or prejudice as to this allegation, the Court finds Trial Counsel was not ineffective.

Ineffective Assistance of Appellate Counsel

In applying *Strickland* to claims of ineffective assistance of appellate counsel, reviewing courts must accord appellate counsel the "presumption that he decided which issues were most likely to afford relief on appeal. A decision with respect to appeal is entitled to the same presumption that protects sound trial strategy." *Pruett v. Thompson*, 996 F.2d 1560, 1568 (4th Cir. 1993).

Although appellate counsel is required to provide effective assistance of counsel, "appellate counsel is *not* required to raise every non-frivolous issue that is presented by the record." *Thrift*, 302 S.C. at 539, 397 S.E.2d at 526 (citing *Jones v. Barnes*, 463 U.S. 745 (1983)). Indeed, "[w]innowing out weaker arguments on appeal and focusing on those more likely to prevail, far from being evidence of incompetence, is the hallmark of effective appellate advocacy." *Smith v. Murray*, 477 U.S. 527, 536 (1986). "For judges to second-guess reasonable professional

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judgments and impose on . . . counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy . . ." *Jones*, 463 U.S. at 754.

"Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome." *Robbins*, 528 U.S. at 288 (quoting *Gray v. Greer*, 800 F.2d 644, 646 (7th Cir. 1986)). To prove prejudice, the applicant must show that, but for counsel's errors, there is a reasonable probability he would have prevailed on appeal. *Anderson v. State*, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003).

2a. Failure to brief issue of non-expert opinion testimony

Applicant argues Appellate Counsel was ineffective for failing to brief the issue of Officer Veal's non-expert opinion testimony. The Court finds this issue is without merit. As explained above, Officer Veal was merely offering an inference based on his perception of the controlled buy video, which the jury had already seen for itself.

Appellate Counsel testified at the evidentiary hearing that the most important issue in the case was the admissibility of the video. Because the video was so damning, he believed that it would not be worthwhile to challenge other issues which would likely not result in a reversal if the trial court's admission of the video was allowed to stand. The Court finds Appellate Counsel has articulated a valid strategic reason for not raising the opinion issue, as that issue was not "clearly stronger" than the issue actually presented concerning the admissibility of the video: Officer Veal's testimony was *not* improper opinion testimony, and even if it had been, its prejudicial value would have been negligible compared to the video itself. Therefore, the Court finds Appellate Counsel was not ineffective as to this issue.

2b. Failure to brief issue of testimony concerning Applicant's reputation

Applicant argues Appellate Counsel was ineffective for failing to brief the issue of Officer

Prather's testimony that Applicant's name had somehow gotten on law enforcement's "radar." Trial Counsel objected to Officer Prather's statement as hearsay, but the trial court overruled the objection. Applicant contends Appellate Counsel should have challenged the trial court's ruling on appeal. The Court finds this allegation is without merit.

As explained above, due to the damning nature of the video evidence against Applicant, Appellate Counsel wisely decided to focus his appeal on reversing the trial court's denial of Trial Counsel's motion to strike the video from evidence. The issue of Applicant's being on law enforcement's "radar" is not "clearly stronger" than the issue Appellate Counsel chose to present. Officer Prather's testimony on this point was extremely vague; he did not say *how* Applicant's name came to law enforcement's attention, nor did he say that Applicant had a reputation as a drug dealer. The Court finds the impact of Officer Prather's testimony was negligible compared to the other evidence in the record, especially the video depicting Applicant engaged in a drug transaction. Furthermore, the only ground on which Trial Counsel objected to Officer Prather's statement was hearsay, and this Court agrees with the trial court that Officer Prather's statement was not hearsay because it was not offered for the truth of the matter asserted. Any appellate challenge to the statement on the ground of hearsay would probably have failed. There were no other preserved objections to this portion of Officer Prather's testimony that Appellate Counsel could have raised in his appeal.

Therefore, the Court finds Applicant has failed to prove either deficiency or prejudice resulting from Appellate Counsel's conduct. Accordingly, the Court finds Appellate Counsel was not ineffective.

V. Conclusion

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

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. 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's attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief be denied and dismissed with prejudice; and

2. The Applicant be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 28 **day of** March **, 2024.**

R. SCOTT SPROUSE
Presiding Judge
Eighth Judicial Circuit

Walhalla, South Carolina