

Jun 03 2024

S.C. SUPREME COURT

FILED

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

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

2024 MAY -3 } PM 2: 29

Clyde Singletary, #305678,)
Applicant,)

BOHIC FLORENCE COUNTY)
CCCP 2 GS)
FLORENCE COUNTY, SC)

Case No.: 2021-CP-21-0256

v.)

ORDER OF DISMISSAL

State of South Carolina,)
Respondent.)

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Clyde Singletary (Applicant) on February 4, 2021. On December 15, 2022, an evidentiary hearing convened before the Honorable George McFaddin, Jr. Applicant was present and represented by Ola A. Johnson, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. Applicant testified on his behalf at the hearing, and Respondent called as a witness Assistant Solicitor Todd Tucker. Following a thorough review of the transcript and the testimony and evidence presented at the 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 NOT presently confined in the South Carolina Department of Corrections. In August 2016, the Florence County Grand Jury indicted him for malicious injury to telephone, telegraph, or electric utility system (2016-GS-21-1313). On January 24, 2018, Applicant proceeded to a jury trial *pro se* before the Honorable D. Craig Brown.¹ Assistant Solicitor Todd S. Tucker represented Respondent. The jury convicted Applicant as indicted, and Judge Brown sentenced him to seven years.

¹ Prior to trial, Applicant moved to relieve his public defender and proceed *pro se*. The Court held a hearing on September 14, 2017, and granted his motion.

Applicant timely filed a notice of appeal, which was perfected by Appellate Defender LaNelle C. DuRant. On appeal, Applicant argued the trial court erred in denying his motion for a directed verdict because the State failed to prove he damaged an electric utility system. The Court of Appeals affirmed. *State v. Singletary*, 2020-UP-176 (filed June 10, 2020). The remittitur was sent July 9, 2020.

Underlying Facts

At trial, Applicant's aunt Glenda Singletary testified she returned home on May 11, 2016, and noticed a haze of smoke and a loose electric wire on the ground. She also noticed electricity in Applicant's home, which was adjacent to her home; she stated that home had not previously had electricity. Ms. Singletary contacted Santee Electric Co-op (Santec) about the loose wire and to restore her power. She noticed a wire that was previously hanging down was now hooked up to another pole and then to Applicant's trailer. (Tr.42-49).

Ms. Singletary testified a Santec employee and the Sheriff's Department responded to the call, and the employee fixed the damage. After the employee and the deputy left, Ms. Singletary heard a chainsaw and looked out to see Applicant attempting to cut down the utility pole. She called Santee again, but by the time the employee arrived, Applicant had turned the chainsaw off. Ms. Singletary explained that Applicant told the Santee employee they did not own the utility pole on Applicant's property—he did. The Santee employee called law enforcement who again responded, but only after Applicant had gone into the woods with the chainsaw. (Tr. 51-54).

Channing Matthews, the Santee employee, testified Ms. Singletary showed him the live wire that was hooked to an extension cord. When Matthews went to disconnect the transformer to repair the line, he saw Applicant with a chainsaw. Applicant expressed to Matthews that the utility

pole was on Applicant's land and Applicant did not want the pole; therefore, he would attempt to cut it down. Matthews called law enforcement. (Tr.62-67).

Deputy Trixie Ussery responded to Matthews' call and met with Matthews. Deputy Ussery remained at the incident location while Matthews made the necessary repairs. (Tr.78-81).

Matthews testified that about forty-five minutes after he made the repairs, he received a second call to return to the home. When he returned, the utility pole was partially cut. Matthews took photos to depict the incident. (Tr. 67-68). Deputy Ussery was also called back; she noted the utility pole appeared to be cut halfway through. Deputy Ussery did not see Applicant but heard a chainsaw in the woods. (Tr. 81-83).

At the conclusion of the State's case, Applicant requested the case be dismissed on grounds of "injustice," arguing his indictment was bogus because "it ain't been true-billed, it ain't stamped." (Tr. 101-02). The trial judge denied Applicant's challenge to the indictment, finding it had in fact been true-billed. He then construed Applicant's motion for "injustice" as a motion for a directed verdict. He explained to Applicant that the State had presented sufficient evidence to proceed and denied Applicant's motion. (Tr. 102). Applicant did not testify or call any witnesses. The jury convicted Applicant as indicted, and Judge Brown sentenced him to seven years.

Current Application

On February 4, 2021, Applicant timely commenced this PCR action alleging:

1. Trial Issues:
 - a. Fake indictment.
 - i. Officer write up a trickery frame up charge.
 - b. Never was giving [sic.] preliminary [hearing].
 - i. I argue before Judge Brown, "No way I'm indicted. I ain't even had a preliminary hearing." He told me to shut up.
 - c. Discovery Rules violation.
 - d. Unfair trial.
 - e. Prosecutorial misconduct:
 - f. Violation of my 5th, 6th, 8th, 14th [amendment rights].



2. Ineffective assistance of appellate counsel:
 - a. Appeal attorney did not do what I ask her.

Respondent filed a return and partial motion to dismiss. Specifically, Respondent moved to dismiss allegations (1)(a), (b), and (e).

On December 7, 2022, Applicant amended his application to allege the following:

Applicant was evaluated regarding competence to stand trial following the order of the trial judge. At trial in January 2018, the Court failed to conduct a hearing pursuant to State v. Blair to establish that Applicant was competent to stand trial and failed to make the evaluation report part of the court record.

At the PCR hearing, Applicant indicated he was proceeding on the following three issues:

1. The Blair issue, as set forth in his amended application;
2. Applicant was illegally sentenced because the trial court should have granted his directed verdict motion; and
3. The jury only deliberated once but was required "to go out and deliberate twice and get a unanimous verdict."²

Applicant did not present testimony or argument on any of the remaining allegations in his original application, and this Court finds those claims are waived.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Florence County Clerk of Court records of the underlying conviction, Applicant's records from the Department of Corrections, the trial transcript, the appellate records, and the records of this PCR action. This Court has further had the opportunity to observe the witnesses presented at the PCR hearing, closely pass upon their credibility, and weigh their testimony accordingly.³ After a careful

² Applicant relayed he did not raise this allegation in his application or amended application. Respondent did not object to this issue being raised.

³ This Court will reference PCR testimony where relevant below. This Court construes these as claims of constitutional violations. See S.C. Code Ann. § 17-27-20(1)(1) (providing a PCR applicant can claim "[t]hat the

review, 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).

Blair issue

Applicant first contends the trial court did not conduct a competency hearing pursuant to *Blair* to determine his competence to stand trial. Applicant did not prove any constitutional violation in this regard.

"The established test in South Carolina for determining a defendant's competency to stand trial is whether the defendant has the present ability to consult with his attorney with a reasonable degree of rational understanding." Sims v. State, 313 S.C. 420, 422, 438 S.E.2d 253, 254 (1993) "[E]vidence of a defendant's irrational behavior, his demeanor at trial and any prior medical opinion on competence to stand trial are all relevant in determining whether further inquiry [into competence] is required, but that even one of these factors, standing alone, may, in some circumstances, be sufficient." State v. Blair, 275 S.C. 529, 533, 273 S.E.2d 536, 538 (1981).

At the PCR hearing, Applicant testified the trial court ordered a competency evaluation, but he never received a report. He recalled having a hearing on the issue on June 24-25, 2016, but he stated he never received a transcript of those hearings. Applicant stated he had previously been diagnosed with schizophrenic, bipolar. He testified his public defender told him the competency evaluation found he was competent to stand trial and represent himself.

Solicitor Todd Tucker recalled Applicant had been evaluated as part of a different criminal charge, and the final report indicated Applicant was competent to stand trial. Tucker stated the cases were "real close in time," "maybe a year or so separating the two." He did not recall the

conviction or sentence was in violation of the Constitution of the United States or the Constitution or laws of this State").

Public Defender's Office expressing any concerns about Applicant's competency at that point. Tucker likewise testified he did not have any concerns with Applicant's competency during trial, and his impression was that Applicant handled himself appropriately at trial and made appropriate motions. Tucker stated that if he had had concerns with Applicant's competency during trial, he would have moved for a competency evaluation.

This Court finds Applicant did not prove he was incompetent to stand trial or that his competency should have been further evaluated. The evidence showed Applicant was evaluated as part of a prior criminal charge and found competent at that time. This Court finds credible Tucker's testimony that Tucker had no concerns about Applicant's competency at trial and would have requested an evaluation if he did. This Court further finds credible Tucker's testimony that the public defender did not express any additional concerns about Applicant's competency. Finally, Applicant did not present any credible evidence at the PCR hearing that he was not competent to stand trial and did not meet his burden in this regard. This Court finds, based on a review of the transcript, that Applicant presented cogent arguments at trial and did not sound irrational. *Cf. Sims*, 3131 S.C. at 422, 438 S.E.2d at 254 ("The established test in South Carolina for determining a defendant's competency to stand trial is whether the defendant has the present ability to consult with his attorney with a reasonable degree of rational understanding."). Thus, this claim is denied.

Illegal sentence

Applicant next contends his sentence is illegal because the trial court should have granted his motion for a directed verdict. At the PCR hearing, he testified,

Because 16-11-740⁴ is a telephone telegraphical statute. It has

⁴ S.C. Code Ann. § 16-11-740 (2015) ("It is unlawful for a person, without the consent of the owner, to willfully: (1) destroy, damage, or in any way inure a telegraph, telephone, *electric utility system*, satellite dish, or cable television

nothing to do with electrical currency statute. I live out in the country and when you live out in the country, all your telephone lines is up under the ground and those boxes on the side of the road, that what the telephone line and the telegraph statute, cable lines and phone lines run through. I don't live in the city. We don't have no phone lines running on poles or nothing like that.

And when you look at Statute 16-11-740 and when you look inside the body of the statute, there's writing in italic, and within the italic it tells you what the definition of that statute stand for, and the italics talks about cable lines, tele—they did some television, deals with phones and stuff like that. It don't deal with electrical currency statute, which deals with power voltage meters. Those are two different type of statutes. Your power can go out and you still have phone and everything when concerning 16-11-740 statute.

And if you look at the pictures and everything and you can see that there never as no meter base, never was no circuit breaker or none of that in the photos that the State had entered as evidence to produce through trial.

This Court construes the foregoing as an argument that the State did not present sufficient evidence to support the charge. This Court further finds this precise issue was raised to the trial court and in Applicant's direct appeal, making it an inappropriate issue for PCR. See Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974) (providing PCR is not a substitute for appeal); Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993) (providing a PCR application cannot raise issues that could have been raised at trial or on appeal). Further, for the same reason set forth in the Court of Appeals' opinion, this Court finds Applicant's argument is patently without merit. Specifically, section 16-11-740 by its plain language—applies to “electric utility systems,” including poles, cables, and wires. Applicant has not set forth any other basis as to why his sentence is illegal and thus has not met his burden of proof in this regard.

system, including *poles, cables, wires*, fixtures, antennas, amplifiers, or other apparatus, equipment, or appliances; [or] (2) obstruct, impede, or impair their services or transmissions” (emphasis added)).

Jury Deliberation

Finally, Applicant contends the jury deliberated only once when it was required to deliberate twice. At the PCR hearing, Applicant averred:

As the Supreme Court has stated, that the lower courts don' have the right to just make a unanimous verdict. The unanimous verdict comes when the jurors can't make a deliverance twice when they go in the delivery room--when they can't go in the delivery room and come back out with a verdict, then the judge can ask for a unanimous verdict, which mean that he would have to bring the case back to trial at a later time.

(PCR Tr. 10). This allegation lacks merit. Based on the trial transcript, the jury left the courtroom after the charge, deliberated, and reached a verdict. (Tr. 145-46). There is no requirement that the jury deliberate twice once it has reached a verdict. Applicant has not set forth a constitutional violation, and this claim is denied.

[Conclusion and signature page follows]

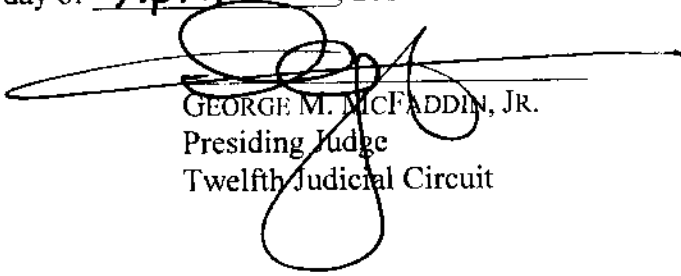
A large, handwritten signature in black ink, consisting of a stylized 'G' followed by a long, sweeping diagonal line extending from the bottom left towards the top right.

CONCLUSION

Based on the foregoing, this Court concludes Applicant has not established any constitutional violations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice. Should Applicant wish to appeal, 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 in seeking review of the denial of PCR. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). If Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g), SCRPC. Attention is directed to Rule 243, SCACR, for appellate procedures.

IT IS THEREFORE ORDERED that this application for PCR is denied and dismissed with prejudice.

AND IT IS SO ORDERED THIS 24th day of April, 2024.


GEORGE M. MCFADDIN, JR.
Presiding Judge
Twelfth Judicial Circuit

Sumter, South Carolina

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COOP. & GS
FLORISSIDE COUNTY, SC

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JUDGMENT IN A CIVIL CASE
CASE NUMBER 2021CP2100256

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
IN THE COURT OF COMMON PLEAS

Clyde Devon Singletary
2024 MAY 4 9 44 AM
South Carolina State Of

PLAINTIFF(S)
Submitted by: _____
DEFENDANT(S)
Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge _____ Judge Code _____ Date 5/3/2024

For Clerk of Court Office Use Only

This judgment was entered on **May 3, 2024**, and a copy mailed first class or placed in the appropriate attorney's box on **May 6, 2024**, to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Doris P. O'Hara

Court Reporter

Doris Poulos O'Hara - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
