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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

The Honorable B. Alex Hyman, Circuit Court Judge

Case No. 2021-CP-36-00337

Clifton Curtis Boozer, #377360, ... Petitioner,

v.

State of South Carolina, ... Respondent.

NOTICE OF APPEAL

Applicant, Clifton C. Boozer, appeals the order of the Honorable B. Alex Hyman, filed on May 28, 2024.

June 4, 2024

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STATE OF SOUTH CAROLINA COUNTY OF NEWBERRY	)	IN THE COURT OF COMMON PLEAS FOR THE EIGHTH JUDICIAL CIRCUIT
Clifton Curtis Boozer, #377360 Applicant, v. State of South Carolina, Respondent.	)	Case No.: 2021-CP-36-00337 **ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief ("PCR") filed by Clifton C. Boozer ("Applicant") on August 26, 2021, and amended on November 15, 2023. The Court convened an evidentiary hearing into the matter on November 27, 2023, at the Newberry County Courthouse. Applicant was present at the hearing and represented by Ashley A. McMahan, Esquire. Zachary W. Jones, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Also testifying on Applicant's behalf was Valencia Wise, Demarquis Boozer, Natasha Robinson, Tyson Jones, Vonshella Griffin, and Malcolm Jones. Applicant's trial counsel, Chief Public Defender Charles V. Verner. ("Counsel"), also testified. After reviewing all records and evidence before the Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections (SCDC) pursuant to orders of commitment of the Newberry County Clerk of Court. Applicant was indicted at the

July 2017 term of the Newberry County Grand Jury for Murder (2017-GS-36-00290). Applicant was represented by Charles Verner, Esquire. Deputy Solicitor Dale Scott, and Assistant Solicitor Taylor Daniel prosecuted the case.

On August 6-10, 2018, Applicant proceeded to trial by jury before the Honorable Frank R. Addy. At the conclusion of Applicant's trial, the jury's verdict found Applicant guilty as charged. Judge Addy sentenced Applicant to imprisonment for life.

Applicant timely filed a notice of intent to appeal his conviction and sentence. Susan B. Hackett of the Office of Appellate Defense represented Applicant on appeal and presented the following issue:

1. The Trial Judge erred in failing to instruct the jury on the lesser-included offense of involuntary manslaughter where the evidence indicated Appellant choked the deceased only after the deceased brandished a knife and threatened Appellant, the two struggled over the knife, and Appellant believed the deceased was trying to get a second knife.

After briefing, the Court of Appeals affirmed Applicant's conviction and dismissed the appeal in an unpublished decision. *State v. Boozer*, 2021-UP-148 (filed May 5, 2021). The remittitur was sent on June 25, 2021.

Factual Summary

Applicant and Victim were involved in a long-term "on-again, off-again relationship." (Tr. p. 554, l. 16). On May 3, 2017, at 8:26 a.m., the Newberry County Sheriff's Office received a 911 call from Applicant. Applicant reported he had just killed his girlfriend. (Tr. p. 133, l. 23; Tr. p. 143, l. 18-20). Within minutes, the police arrived at Victim's house. (Tr. p. 144, l. 9-10). Applicant walked out of the front door and was immediately arrested. (Tr. p. 145, l. 12-19). As he was being placed in handcuffs, Applicant stated "things went too far." (Tr. p. 146, l. 23). Applicant's boots were stained with blood but he had no visible injuries and did not complain of any pain. (Tr. p. 152, l. 1-17; Tr. p. 163, l. 21-24). Law enforcement discovered the frame to Victim's front door

had been damaged, indicative of a forced entry. (Tr. p. 167, l. 16-17; Tr. p. 498, l. 13-21; Tr. p. 499, l. 9). When officers entered the home, they also observed signs of struggle, including a torn pink tank-top laying on the ground, blood stains throughout the master bedroom, curtains ripped from the wall, and a carving of "Cliff was here" on the TV. (Tr. p. 166, l. 22-25; Tr. p. 172, l. 15-17; Tr. p. 174, l. 1-11; Tr. p. 177, l. 1-25). Police found Victim's body laying between the bed and the wall. (Tr. p. 171, l. 14-15).

Present Application

Applicant timely commenced this PCR action on August 26, 2021. In his application for post-conviction relief, Applicant alleges he is entitled to relief based on the following:

1. Ineffective Assistance of Counsel:
   a. Counsel's performance was deficient and prejudiced Defendant.
2. Abuse of Discretion:
   a. The Court abused its discretion by failing to grant continuance to allow counsel to gather evidence or time to conduct investigation.
3. *Brady*[1] Violation

On November 15, 2023, Applicant amended his application to raise the following claims:

1) Ineffective Assistance of Counsel of Deputy Public Defender Charles V. Verner
   (a) Failure to call witnesses at trial that would present evidence as to the victim's motive and/or prior bad acts which would enhance the Applicant's claim of self-defense since he was a victim of domestic violence.
   (b) Failure to present witnesses and to argue S.C. Code § 16-25-90 at sentencing that the Applicant was a victim of domestic violence and request a finding on the record from the judge that would allow the Applicant to be eligible for parole after serving ¼ of his sentence.

At the evidentiary hearing, Applicant proceeded only on his allegations of ineffective assistance of counsel.[2]

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[1] *Brady v. Maryland,* 373 U.S. 83 (1963).

[2] As Applicant provided no evidence or argument concerning his allegations of abuse of discretion or *Brady* violation, the Court deems those issues abandoned.

II. 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 Newberry County Clerk of Court regarding the subject conviction, Applicant's appellate records, and the original and amended applications for post-conviction relief. This Court has reviewed the records 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:

Ineffective Assistance of Trial Counsel

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)).

Failure to call witnesses at trial to support Applicant's claim of self-defense

Applicant claims Counsel was ineffective for failing to call witnesses at trial to establish that Applicant was a victim of domestic violence, which would have supported his claim that he killed Victim in self-defense. The Court finds this allegation is without merit.

At the evidentiary hearing, Applicant presented the testimony of multiple witnesses:

Valencia Wise testified that she was Applicant's cousin. She stated that the Victim once tried to start a fight with her at a birthday party in 2016 because Victim thought Wise was trying to start a romantic relationship with Applicant. Wise also testified that Victim would often cause a scene when Applicant would go to Sunday dinner with his relatives, driving by and calling Applicant's phone repeatedly until Applicant would agree to leave with her.

DeMarquis Boozer, Applicant's brother, testified he once had pick up Applicant with all of his clothes from a house he was sharing with Victim because Applicant was trying to get away from her. He characterized Victim as totally controlling and easily upset. However, he also testified that she was not very aggressive, and he denied that she posed a threat to him or his family.

Natasha Robinson,[3] Applicant's sister, testified that Applicant once left Victim to stay at Robinson's house. Victim drove to the house and stayed outside honking the horn all night, to the point that Robinson had to threaten to call the police. Victim also threatened to commit suicide if Applicant would not come back to her, and she even attempted suicide at one point. Robinson also testified that Victim once threatened to drive her car through a house belonging to the mother of Applicant's child, but Robinson was able to talk her into calming down. Robinson related another incident in which Victim threw Applicant's belongings into the road. Eventually,

[3] The trial transcript reflects that Counsel *did* call Robinson at trial. (Tr. pp. 714–36). Robinson's trial testimony

Robinson barred Victim from coming to her house and threatened to obtain a restraining order, but Victim would still try to get Applicant to leave with her by showing up and creating a disturbance until Applicant agreed to do what she wanted. Robinson testified Victim would call her phone in the middle of the night and would scream and yell, but she stated Victim never threatened her. Robinson stated she was concerned for Applicant and told him Victim was "building a case" against him.

Tyson Jones, Valencia's brother, testified Victim once tried to prevent Applicant from leaving her house by kicking the door of his car. He also testified that, on one occasion when Applicant was preparing to go to a party, Victim threw tea and Clorox on Applicant's clothes. Jones stated Victim thought he was setting up Applicant with other women.

Vonshella Griffin, the mother of Applicant's child, testified Victim would call Applicant constantly every time he would visit her. She also testified that she had to change her phone number because Victim called her house so many times.

Finally, Malcolm Jones, Tyson Jones' nephew, testified about an incident where Applicant and Jones were talking at a gas station. Victim drove up and demanded to know what Applicant was doing there, implying Applicant was trying to meet another woman. Victim pushed Applicant, and Applicant eventually agreed to leave with her.

Applicant now argues the testimony of these witnesses could have changed the outcome of his trial by supporting his claim that he killed Victim in self-defense. Therefore, Applicant claims Counsel was ineffective for failing to call them at trial. The Court disagrees.

> There are four elements required by law to establish self-defense .... First, the defendant must be without fault in bringing on the difficulty. Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger. Third, if his defense is based upon his belief of imminent danger, a reasonably

> prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life. Fourth, the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance. If, however, the defendant was on his own premises he had no duty to retreat before acting in self-defense.

State v. Davis, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984). While the testimony presented at the evidentiary hearing strongly showed that Applicant's relationship with Victim was toxic and that Victim was jealous and suspicious of Applicant, it has little relevance to whether Applicant's slaying of Victim satisfied the elements of self-defense.

None of the testimony relates specifically to the confrontation at Victim's house on the morning of May 3, 2017, so it does not tend to establish whether Applicant was at fault in bringing on the fatal encounter. The testimony showed a common pattern: Applicant would leave Victim, either due to a breakup or to attend a social event without her, and Victim would track him down and cause a disturbance until Applicant would agree to come back to her. The facts of the present case, however, do not fit this pattern. It is undisputed that, on the day of the incident, Applicant took a taxi to Victim's house and killed her there.

In addition, none of the testimony presented by Applicant's witnesses at the evidentiary hearing tended to show that Applicant was, or reasonably believed himself to be, in danger of death or great bodily injury. Although Applicant's witnesses described numerous incidents of Victim's misbehavior, most of those incidents merely involved verbal harassment of Applicant and his family members. On other occasions, Victim harmed herself or damaged Applicant's property. The few instances of physical violence between Victim and Applicant were relatively harmless acts like pushing him. None of the conduct described by the witnesses presented an imminent

death or great bodily injury to Applicant, nor would a "reasonably prudent man of ordinary firmness and courage" have believed he was in imminent danger from such conduct.

Finally, none of the witness testimony presented at the evidentiary hearing showed that Applicant lacked other probable means of avoiding the danger, such as retreating from Victim's house. Nor did any of the witnesses characterize Victim's house as being Applicant's "own premises," as would excuse him from the duty to retreat.[4]

The Court concludes that the testimony of these additional witnesses likely would not have changed the outcome of Applicant's trial, especially weighed against the State's evidence disproving self-defense: Applicant was not allowed to be in Victim's home, and he was asked to leave when he showed up unannounced two days before the incident (Tr. pp. 660–61; pp. 686–89); the frame of the door to Victim's house was broken, and Victim's child testified it was not broken when she left the house earlier that morning (Tr. pp. 657–58); Victim was stabbed in the neck and the chest and then strangled to death over the course of several minutes, long after she lost consciousness (Tr. pp.401–12); Applicant did not have any visible injuries when law enforcement interviewed him on the day of the killing (Tr. pp. 474–76); and Applicant had threatened to "slit [Victim's] throat and beat the blood out of her" a little over a month before he killed her (Tr. pp. 628–29). Therefore, the Court finds Applicant has not met his burden of proving that he was prejudiced by Counsel's failure to call those witnesses.

In addition, the transcript reflects that Counsel was trying to keep out evidence that Victim

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[4] S.C. Code Ann. section 16-11-440(C), commonly called the "stand your ground" provision, expanded the right not to retreat to encompass any place where the defendant had a right to be, not merely his own premises. However, none of the evidence presented at the evidentiary hearing showed that Applicant had a right to enter Victim's home. Had Counsel attempted to introduce any such evidence at trial, he likely would have opened the door for the State to introduce evidence that Victim had obtained a restraining order against Applicant, which was still in effect at the time of the killing. (Tr. pp.747–52).

had obtained a restraining order against Applicant prior to being killed by him. The trial court warned him that, if Counsel attempted to introduce evidence that Victim was stalking Applicant, he would open the door for the State to introduce evidence of the restraining order. (Tr. pp. 747–52). That evidence would certainly have been highly prejudicial to the defense. Therefore, it was not unreasonable for Counsel not to introduce testimony that Victim was stalking Applicant—which was the primary thrust of the testimony presented by Applicant's witnesses at the evidentiary hearing. Therefore, the Court finds Applicant has not met his burden of proving Counsel's performance was deficient.

Because Applicant has not proved either deficiency or prejudice from Counsel's failure to call additional witnesses at trial, the Court finds this allegation of ineffective assistance of counsel is without merit. Accordingly, this allegation is denied and dismissed with prejudice.

Failure to argue S.C. Code Ann. Section 16-25-90 at sentencing

Applicant also claims Counsel was ineffective for failing to present the witnesses' testimony at sentencing to argue that Applicant suffered criminal domestic violence at the hands of Victim and, therefore, is eligible for parole after serving one-fourth of his prison term pursuant to S.C. Code Ann. Section 16-25-90. The Court finds this allegation meritless.

Section 16-25-90 provides:

> Notwithstanding any provision of Chapters 13 and 21 of Title 24, and notwithstanding any other provision of law, an inmate who was convicted of, or pled guilty or nolo contendere to, an offense against a household member is eligible for parole after serving one-fourth of his prison term when the inmate at the time he pled guilty to, nolo contendere to, or was convicted of an offense against the household member, or in post- conviction proceedings pertaining to the plea or conviction, presented credible evidence of a history of criminal domestic violence, as provided in Section 16-25-20, suffered at the hands of the household member. This section shall not affect the provisions of Section 17-27-45.

Applicant argues he has presented "credible evidence of a history of criminal domestic violence" at the hands of Victim through the testimony of the witnesses at the evidentiary hearing. He contends Counsel was ineffective for failing to present this testimony at his sentencing so that Applicant would become eligible for parole after serving one-fourth of his sentence.

The Court finds Section 16-25-90 is not applicable where, as in Applicant's case, a defendant is convicted of murder and receives a life sentence. As a life sentence has no fixed duration, it would be impossible to calculate "one-fourth" of a term of life imprisonment. Any reading of Section 16-25-90 that would require such a result is absurd. In addition, Section 16-3-10 provides:

> No person sentenced to life imprisonment pursuant to this section is eligible for parole, community supervision, or any early release program, nor is the person eligible to receive any work credits, education credits, good conduct credits, or any other credits that would reduce the mandatory life imprisonment required by this section.

This language shows that the legislature intended that no one serving a term of life imprisonment for murder should be eligible for parole. "The Court must reject a statutory interpretation if it leads to an absurd result that could not possibly have been intended by the legislature or that defeats plain legislative intent." *State v. Taylor*, 436 S.C. 28, 34, 870 S.E.2d 168, 171 (2022), *reh'g denied* (Apr. 5, 2022).

Furthermore, as already explained, the witnesses who testified on Applicant's behalf at the evidentiary hearing focused mainly on Victim's stalking of Applicant and causing a scene whenever he would leave her. While indicative of a turbulent relationship, those acts do not constitute "domestic violence" under Section 16-25-20 (defining domestic violence as "caus[ing] physical harm or injury to a person's own household member" or "offer[ing] or attempt[ing] to cause physical harm or injury to a person's own household member with apparent present ability

under circumstances reasonably creating fear of imminent peril"). As already discussed, the few instances of physical battery described by Applicant's witnesses were relatively harmless and would not create "fear of imminent peril" in a reasonable person. The Court finds Applicant has failed to present credible evidence of a history of criminal domestic violence at the hands of Victim. Therefore, even if Section 16-25-90 applied to persons serving a life sentence for murder, Applicant has not met his burden of proving Counsel's failure to present those witnesses at his sentencing prejudiced him.

Accordingly, the Court finds Applicant has failed to establish that Counsel was ineffective. Therefore, this allegation is denied and dismissed with prejudice.

[*conclusion and signature on following page*]

III. 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 for post-conviction relief. 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 21 **day of** May **, 2024.**

B. ALEX HYMAN
Presiding Judge
Eighth Judicial Circuit

Conway, South Carolina