

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM JASPER COUNTY
Court of Common Pleas
The Honorable Kristi Curtis, PCR Action Judge
2020-CP-27-00397

RECEIVED

Jun 10 2024

S.C. SUPREME COURT

NAIJUWUAN CHISOLM, #371665,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Naijuwuan Chisolm appeals the denial of his post-conviction relief application. The post-conviction relief action was heard and denied by the Honorable Kristi Curtis, circuit court judge, on July 21, 2022, and was denied by written order issued filed on June 7, 2024. Applicant received notice of the judgement on June 7, 2024.

/s Chelsey F. Marto
Chelsey F. Marto, Esquire
Attorney for the Applicant
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Columbia, SC, 29211-1549



ALAN WILSON
ATTORNEY GENERAL

June 3, 2024

JACQUES
COURT CLERK
2024 JUN 03 - 7 11 59 AM

The Honorable Margaret Bostick
Jasper Clerk of Court
PO Box 248
Ridgeland, South Carolina 29936-0248

Re: **Naijuwan S. Chisolm, # 371665 v. State of South Carolina**
2020-CP-27-00397

Dear Ms. Armstrong:

Enclosed please find the original **Order of Dismissal** signed by the Honorable Kristi F. Curtis, in the above-captioned case, for filing in your office. In addition, please forward proof of service and a time stamped copy back to our office for our file.

Sincerely,

Danielle Dixon
Assistant Attorney General

DD/ls
Enclosure (s)

cc: Chesley F. Marto, Esquire

STATE OF SOUTH CAROLINA)
COUNTY OF JASPER)
))
Naijuwan S. Chisolm, SCDC #371665,)
))
Applicant,)
))
v.)
))
State of South Carolina,)
))
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Case No. 2020-CP-27-0397

ORDER OF DISMISSAL

FILED
JASPER COUNTY
CLERK OF COURT
2024 JUL -7 AM 9:20

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Naijuwan S. Chisolm (Applicant) on August 25, 2020. On July 21, 2022, an evidentiary hearing convened before the Honorable Kristi F. Curtis. Applicant was present and represented by James K. Falk, Esquire. Assistant Attorney General Lauren Mims represented Respondent. At the hearing, Applicant testified on his behalf and called as a witness trial counsel Robert Hughes, Esquire. Following a thorough review of the records before this Court 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 currently incarcerated in the South Carolina Department of Corrections serving an aggregate forty-five-year sentence. In July 2015, a Jasper County Grand Jury indicted Applicant for murder and possession of a weapon during a violent crime. These charges arose from the death of Sterling “Slim” Jenkins on June 9, 2015, who was fatally shot on his front porch. Witnesses identified Applicant as the shooter.

On February 21, 2017, Applicant proceeded to a jury trial before the Honorable Perry M. Buckner, III. Robert Hughes, Esquire, represented Applicant, and Assistant Solicitors Mary

Jones and Brian Hollen prosecuted the case. The jury convicted Applicant as indicted, and Judge Buckner sentenced him to consecutive terms of forty years for murder and five years for the weapon charge.

Applicant filed a timely notice of appeal that was perfected by Appellate Defender Susan B. Hackett, who submitted a brief pursuant to Anders v. California, 386 U.S. 738 (1967). Applicant then submitted his own *pro se* response. Following a review, the Court of Appeals dismissed the appeal pursuant to Anders. State v. Naijuwan Chisolm, Op. No. 2019-UP-352 (Ct. App. filed Nov. 6, 2019). The remittitur was sent November 22, 2019.

CURRENT APPLICATION

On August 17, 2020, Applicant timely filed this PCR application alleging:

Ineffective assistance of counsel: counsel did not object to his forty-year sentence, which was above the statutory maximum the Court could oppose.

As relief, Applicant requested a new trial. At the PCR hearing, Applicant waived his allegation related to the sentence and proceeded on the following grounds of ineffective assistance of counsel:

1. Counsel failed to sufficiently investigate;
2. Counsel failed to seek out reasonable plea offers;
3. Counsel failed to request a Logan charge; and
4. Counsel did not adequately cross-examine the State's main witness, Jesnesiha Houston.¹

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Jasper County Clerk of Court records of the underlying convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, and the records of

¹ Applicant raised this allegation during his testimony without objection.

Applicant's PCR application. This Court has further had the opportunity to observe the witnesses presented at the evidentiary hearing, closely pass upon their credibility, and weigh their testimony accordingly. 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 fact and conclusions of law as required by section 17-27-80 of the South Carolina Code.

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When the application alleges ineffective assistance of counsel, the applicant must prove "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, 466 U.S. 668 (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, 466 U.S. at 687-88. First, an applicant must prove counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, courts measure 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). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, a PCR applicant must prove that counsel's deficient performance prejudiced the 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.

Failed to Investigate

Applicant first contends counsel was ineffective for not sufficiently investigating. This Court finds Applicant did not prove this ground.

At the PCR hearing, Applicant testified counsel met with him three or four times and reviewed some of the discovery. He stated they discussed “trying to get somebody to talk, but that didn’t go nowhere.” When asked whether he gave counsel any names of potential alibi or character witnesses, Applicant relayed he did not. Trial counsel testified the solicitor’s office was good about providing discovery, and he reviewed discovery with Applicant as soon as possible after receiving it. Counsel explained he kept looking for a possible defense, but Applicant never provided the name of an alibi witness or another witness, or anything that could help him.

This Court finds credible counsel’s testimony that Applicant never provided the names of any witnesses to investigate. This Court notes this is consistent with Applicant’s own testimony. Based on this, counsel’s failure to further investigate was reasonable under prevailing professional norms and not deficient. Applicant has not set forth with specificity what more counsel should have investigated and thus did not meet his burden of proving deficiency. Likewise, Applicant did not introduce any evidence at the PCR hearing of what counsel would have uncovered upon a further investigation and thus did not meet his burden of proving prejudice. Thus, this claim is denied.

Failed to seek reasonable plea offer

Applicant next contends counsel was ineffective for not seeking a reasonable plea offer. This Court finds Applicant did not prove this ground.

At the PCR hearing, Applicant testified counsel relayed a thirty-year plea offer to murder a few weeks or months before trial, which Applicant turned down. He averred counsel “probably

could have did better and probably tried to—couldn't get a manslaughter plea or something that was less." Applicant stated he did not discuss with counsel a plea to a lesser-included offense. He agreed it was his decision to turn down the plea offer.

Counsel testified the solicitor offered a plea to the minimum sentence for murder. He explained he could not negotiate a plea to a lesser-included offense because Applicant never told him he shot the victim. Counsel testified, "I couldn't go fishing for manslaughter or anything like that because he always maintained his innocence and I could not in good faith try to negotiate something that he would not admit to."

This Court finds counsel's foregoing testimony credible. Counsel articulated a valid reason for not negotiating a plea to a lesser-included offense in that Applicant never indicated he shot the victim—making it difficult to negotiate a plea to a lesser-included offense. This Court finds counsel's performance was reasonable under prevailing professional norms and not deficient. Likewise, this Court finds that based on counsel's credible testimony, it is not reasonably likely further plea negotiations would have yielded a better offer. Thus, Applicant has not shown deficiency or prejudice, and this claim is denied.

Failed to request Logan Charge

Applicant next contends counsel was ineffective for not requesting the circumstantial evidence charge set forth in State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013). This Court finds Applicant has failed to meet his burden of proof in this regard.

In Logan, the Court recommended the following circumstantial evidence charge:

There are two types of evidence which are generally presented during a trial—direct evidence and circumstantial evidence. Direct evidence directly proves the existence of a fact and does not require deduction. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact.

Crimes may be proven by circumstantial evidence. The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence, however, to the extent the State relies on circumstantial evidence, all of the circumstances must be consistent with each other, and when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt. If these circumstances merely portray the defendant's behavior as suspicious, the proof has failed.

The State has the burden of proving the defendant guilty beyond a reasonable doubt. This burden rests with the State regardless of whether the State relies on direct evidence, circumstantial evidence, or some combination of the two.

Id. at 99, 747 S.E.2d at 452.

At trial, the Court provided the following circumstantial evidence charge:

Direct evidence, ladies and gentleman, is the testimony of a person who claims to have actual knowledge of a fact, such as an eyewitness to an event. Direct evidence is evidence that immediately establishes the main fact to be proved.

Circumstantial evidence, as contrasted with direct evidence, is proof of a chain of facts and circumstances indicating the existence of a fact. Circumstantial evidence is evidence that immediately describes or establishes collateral facts from which the main fact may or may not be inferred. Circumstantial evidence is based on inferences and not on personal knowledge or personal observation. The law makes absolutely no distinction between the weight or value to be given to either direct evidence or circumstantial evidence, nor is a greater degree of certainty required of circumstantial evidence than of direct evidence.

You, ladies and gentlemen of the jury, should weigh or consider or evaluate all evidence in this case, both direct and circumstantial. After considering all the evidence in this case, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty.

On the other hand, after considering, weighing, evaluating all the evidence in this case, both direct and circumstantial, if you are convinced of the guilt of the defendant beyond a reasonable doubt, you must find the defendant guilty.

(R. 351-52).

At the PCR hearing, counsel testified he reviewed Judge Buckner's charges and liked Judge Buckner's circumstantial evidence charge. He stated he was familiar with the Logan circumstantial evidence charge, but he liked Judge Buckner's charge better because it flowed and the jury heard "what I want them to hear."

This Court finds counsel articulated a valid reason for not requesting the Logan charge in that he liked the flow of Judge Buckner's charge better. This Court further finds the charge given was substantially correct and adequately covered the law. Thus, counsel was not deficient for not objecting. Further, it is not reasonably likely the outcome would be different had counsel requested and received the Logan circumstantial evidence charge. Critically, although the State relied on some circumstantial evidence in proving Applicant's guilt, this was not a purely circumstantial evidence case. Rather, eyewitness Houston testified she knew Applicant from middle school and she saw him shoot the victim. The State thus had some direct evidence—in addition to circumstantial evidence—of Applicant's guilt, and it is not reasonably likely the outcome would have been different had counsel requested and the court charged the Logan charge. Thus, this claim is denied.

Failed to adequately cross-examine Janesiha Houston

Finally, Applicant contends counsel was ineffective in his cross-examination of Janesiha Houston, who identified him as the shooter at trial. Applicant did not prove this ground.

At the PCR hearing, Applicant averred Houston's two statements were not credible. He stated he tried to point out some things for counsel to cross-examine her on and attempted to impeach her, "but they wouldn't let it go through." Counsel testified the only thing Applicant asked him to cross-examine Houston about was that "she said it was Naiki and my name is Naiji."

This Court finds credible counsel's foregoing testimony that the only thing Applicant asked him to cross-examine Houston about was calling him Naiki when his name was Naiji. This Court further finds counsel was not deficient for not cross-examining Houston on this point. Specifically, Houston testified she knew Applicant from middle school and identified several nicknames he went by, including Naiji, Nai, and Nike. (R. 221). This Court finds it is not reasonably likely further cross-examination on Applicant's nickname would have changed the outcome of trial. Finally, this Court finds counsel's cross-examination of Houston was reasonable under prevailing professional norms and not deficient. (R. 235-41). Applicant did not point out what more counsel should have done that would reasonably change the outcome of trial and thus did not meet his burden of proving deficiency or prejudice. Thus, this claim is denied.

[Conclusion and signature page follows]

CONCLUSION

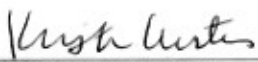
Based on the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this PCR application is denied and dismissed with prejudice.

Should Applicant wish to seek appellate review, he must file and serve a notice of appeal within thirty days of written notice of the entry of this order. See Rule 203, SCACR. Applicant has the right to 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 his behalf. Rule 71.1 (g). SCRCP. Attention is directed to Rule 243, SCACR, for appropriate appellate procedures.

IT IS THEREFORE ORDERED:

1. The PCR application be denied and dismissed with prejudice; and
2. Applicant be remanded to custody of Respondent.

AND IT IS SO ORDERED this 29th day of May, 2024.



KRISTI F. CURTIS
Presiding Judge
Fourteenth Judicial Circuit

Sumter, South Carolina.