RECEIVED
Aug 23 2024
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT
APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
The Honorable J. Derham Cole, PCR Action Judge
2023-CP-07-01369

ISAIAH GADSON, #235912,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Isaiah Gadson appeals the denial of his post-conviction relief application. The post-conviction relief action was heard and denied by the Honorable J. Derham Cole, circuit court judge, on May 7 2024, and was denied by written order issued filed on August 13, 2024. Applicant received notice of the judgement on August 21, 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:
Danielle Dixon, Esquire
Office of the Attorney General, State of SC
P.O. Box 11549
Columbia, SC, 29211-1549

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	The FOURTEENTH JUDICIAL CIRCUIT
Isaiah Gadson, Jr., #235912,	)	
Applicant,	)	
v.	)	**ORDER OF DISMISSAL**
State of South Carolina,	)	Civil Action No. 2023-CP-07-01369
Respondent.	)	

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Isaiah Gadson, Jr. (Applicant) on July 11, 2023. On May 7, 2024, an evidentiary hearing convened before Circuit Judge J. Derham Cole. Applicant was present and represented by Chelsey Marto, Esq. Assistant Attorney General Danielle Dixon represented the State. At the hearing, Applicant testified on his behalf and called as a witness trial counsel Trasi Campbell, Esq. 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. The Court denies relief and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving an aggregate fifty-year sentence. In October 2017, the Beaufort County Grand Jury indicted Applicant for Criminal Sexual Conduct (2016-GS-07-01548); Murder (2016-GS-07-01549); Kidnapping (2016-GS-07-01550); and Armed Robbery (2016-GS-07-01551). These charges arose from the fatal shooting of Daniel Krulewicz and the sexual assault of a fifteen-year-old female (Minor Victim) on July 5, 1980.

Applicant's cases were tried before a jury from May 21 to 24, 2018 and Circuit Judge

Brooks P. Goldsmith. Assistant Public Defenders Trasi Campbell and Benjamin Tripp represented Applicant. Assistant Solicitors Hunter Swanson and Kimberly Smith prosecuted the case. Applicant was convicted as indicted and sentenced to fifty years for Murder, thirty years for Criminal Sexual Conduct, and thirty years for Armed Robbery.

Applicant filed a notice of appeal, which was perfected by Chief Appellate Defender Robert M. Dudek. On appeal, Applicant argued the trial court erred in admitting victim Lori Lawless's testimony about a different sexual assault that Applicant committed in 1983. State v. Gadson, 439 S.C. 278, 279, 886 S.E.2d 719, 720 (Ct. App. 2023). Although the Court of Appeals found the issue unpreserved, the Court further found the trial court did not abuse its discretion in admitting the testimony under Rule 404(b) because the other victim's testimony "was relevant to establish [Applicant]'s identity as the perpetrator of Victim's attack as well as his modus operandi," and that the evidence established "the necessary 'logical connection' between the two sexual assaults." Id. at 281-82, 886 S.E.2d at 721. Likewise, the Court found the court did not abuse its discretion in admitting the evidence under Rule 403, SCRE. The remittitur was sent May 8, 2023.

CURRENT PCR APPLICATION

On July 11, 2023, Applicant timely filed this PCR application alleging the following:

Ineffective assistance of counsel

> 1. Counsel failed to investigate Applicant's mental health and request a mental examination, which could have formed the basis of an insanity defense or a determination that he was not competent to stand trial.
>
> 2. Counsel failed to object to the trial court admitting testimony about a 1983 assault committed by Applicant.

As for relief, Applicant requested reversal of his convictions and the granting of a new trial.

Prior to the hearing, Applicant filed an amended application alleging counsel was ineffective for failing to:

1. Prepare and call Applicant to testify at trial;

2. Contemporaneously object to Lori Lawless' testimony;

3. Request a curative instruction after the denial of a mistrial motion;

4. Request the circumstantial evidence charge from Logan;

5. Object to the charge that malice can be inferred from the use of a deadly weapon; and

6. Effectively impeach witness testimony including that of George Brown[1] and the investigator.

At the hearing, Applicant proceeded only on the six allegations of his amended application.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Beaufort 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 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 of Law Annotated.

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

[1] George Brown appears to be a scrivener's error. The only witness from trial with the last name of Brown was Clifford Brown.

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 call Applicant to testify

Applicant first contends counsel was ineffective for failing to prepare him to testify and call him as a witness. This Court finds Applicant did not prove this ground.

At the PCR hearing, Applicant denied raping anyone but claimed trial counsel believed he was guilty from the beginning. He testified he was not informed he had a right to testify, and counsel did not tell him he needed to testify. Counsel testified she was appointed to represent Applicant over a year before trial and met with him at least once a month. She stated she discussed with Applicant his right to testify and provided him the pros and cons of testifying. Ultimately,

counsel stated Applicant did not want to testify.

This Court finds credible counsel's testimony that she discussed with Applicant the pros and cons of testifying, and Applicant chose not to testify. Based on this testimony, this Court finds counsel's performance was reasonable under prevailing professional norms and not deficient. This Court further notes the trial court advised Applicant of his right to testify and gave him an opportunity to discuss that with counsel prior to making his decision. (Tr. 503-07). Ultimately it was Applicant's decision not to testify, and he waived his right to testify on the record. (Tr. 507). Finally, this Court finds Applicant did not offer credible testimony at the PCR hearing that would have likely changed the outcome of trial had he testified and thus did not meet his burden of proving prejudice. Thus, this claim is denied.

Failed to contemporaneously object to Lori Lawless's testimony

Applicant next contends counsel was ineffective for not contemporaneously objecting to Lori Lawless's testimony about a situation when Applicant sexually assaulted her. This Court finds Applicant did not prove this ground.

Prior to trial, the State sought to introduce through Rule 404(b), SCRE, testimony that Applicant sexually assaulted Lawless in a manner similar to Minor Victim. Trial counsel opposed the motion, and the trial court held an in-camera hearing. (Tr. 64-126). Thereafter, the Court ruled the evidence was admissible under Rule 404(b), and the State proved it by clear and convincing evidence. (Tr. 125-26, 137). Counsel did not renew her objection prior to Lawless's testimony.

On appeal, Applicant argued the trial court erred in allowing Lawless's testimony. Although the Court of Appeals found this issue was unpreserved, it went on to find the trial court did not abuse its discretion in admitting the testimony under Rules 404(b) and 403, SCRE.

Based on the foregoing, this Court finds Applicant did not demonstrate prejudice from

counsel's failure to contemporaneously object to Lawless's testimony. Initially, this Court finds this issue was fleshed out through the testimony of Lawless and Investigator Bob Bromage prior to trial, and counsel's argument in this regard was reasonable under prevailing professional norms. Applicant did not set forth at the PCR hearing what additional argument counsel should have made in this regard other than to contemporaneously object and thus did not meet his burden of showing by a reasonable likelihood that the trial court would have changed its ruling had counsel contemporaneously objected. Finally, based on the Court of Appeals opinion, it is not reasonably likely the Court of Appeals would have reversed based on this issue had counsel properly preserved it. Applicant thus did not prove prejudice, and this claim is denied.

Failed to request a curative instruction after the denial of a mistrial motion

Applicant next contends counsel was ineffective for not requesting a curative instruction after the trial court denied his motion for a mistrial. This Court finds Applicant did not prove this ground.

During Investigator Bromage's direct testimony, the following exchange occurred:

> Q. Okay. What year was it when you got a DNA database hit on Isaiah Gadson?
>
> A. 2016, August 3rd, I received a call from the South Carolian State Law Enforcement Division regarding that.

(Tr. 405). Counsel objected and asked to approach the bench. (Tr. 405). Thereafter, she placed her mistrial motion on the record, arguing the testimony that Applicant's DNA evidence was obtained from a law enforcement database violated Rule 404, SCRE. Counsel further stated, "We can't repair it by a curative instruction and you can't take back what Officer Bromage said to the jury." (Tr. 415). The solicitor asserted Investigator Bromage did not specifically mention an offender database, and the testimony was less prejudicial in light of the fact the jury had information that

Applicant had pled no contest in the case involving Lawless. The solicitor likewise asserted the testimony about the offender database was not "even that noticeable," and "probably a curative instruction would call more attention to it, because I certainly moved right on for there." (Tr. 415-16). The trial court denied the mistrial motion.

At the PCR hearing, Applicant stated he did not remember the mistrial motion. Counsel testified she did not request a curative instruction because she did not want to highlight the testimony for the jury.

This Court finds credible counsel's foregoing testimony. Based on this credible testimony—which is consistent with counsel's statement to the trial court—this Court finds counsel articulated a valid reason for not requesting a curative instruction in that she did not want to highlight this information for the jury. Applicant thus did not prove deficiency. This Court further agrees that had counsel requested and received a curative instruction, it would have drawn more attention to the fact Applicant's DNA was on an offender database than Investigator Bromage's testimony on this issue. Thus, it is not reasonably likely a curative instruction would have changed the outcome of trial, and Applicant did not prove prejudice.

Failed to request the circumstantial evidence charge from Logan

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.

"When requested, the Logan charge must be given in cases based in whole or part on circumstantial evidence." State v. Dent, 440 S.C. 449, 453, 892 S.E.2d 294, 296 (2023). 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:

> During the presentation of the evidence during a trial, there are typically two types of evidence submitted. Either direct or circumstantial evidence. And direct evidence, of course, is testimony of a person who claims to have actual knowledge of a fact such as an eyewitness. It's evidence which immediately establishes the main fact to be proven.
>
> Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. It is evidence which immediately establishes collateral facts from which the main fact may be inferred. Circumstantial evidence is based on inference, and not on personal knowledge of, or observation, but the law makes no distinction between the weight or the value to be given to either direct or circumstantial evidence nor is a greater degree of proof required for circumstantial evidence than of direct evidence. You should weigh all of the evidence in this case.

(R. 570-71). At the PCR hearing, counsel testified she would have requested the Logan charge if this case had been completely circumstantial, but due to the direct evidence the State presented, she did not believe the Logan charge was necessary.

Initially, this Court finds the charge was substantially correct and adequately covered the

law. Further, this Court finds counsel articulated a valid reason for not requesting the Logan charge in that the State presented direct evidence of guilt. Specifically, Minor Victim testified extensively at trial about the murder, kidnapping, and rape. Although she could not identify Applicant, the DNA expert testified the DNA profile developed from semen on Victim's underwear matched Applicant, and the probability of randomly selecting an unrelated individual with a DNA profile matching the semen was one in 2.1 trillion. (Tr. 344). Likewise, the expert testified the DNA profile developed from semen on Victim's pants matched Applicant, and the probability of randomly selecting an unrelated individual with a DNA profile matching the semen was approximately one in 3.7 quadrillion. (Tr. 344). Based on the foregoing, counsel's failure to request the Logan charge was reasonable under prevailing in professional norms and not deficient.

Finally, it is not reasonably likely the outcome would be different had counsel requested and received the Logan circumstantial evidence charge. The DNA evidence here was overwhelming, and there is no logical, reasonable explanation for Applicant's DNA being on Victim's clothes other than for the conclusion the jury reached—that Applicant was guilty of the crime Victim accused him of.[2] Based on the foregoing, this Court finds it is not reasonably likely the outcome would have been different had counsel requested and the court charged the Logan charge, and this claim is denied.

Failed to object to inferred malice charge

Applicant next contends counsel was ineffective for not objecting when the Court charged the jury that it could infer malice from the use of a deadly weapon. (Tr. 576). Under the law that existed at the time of Applicant's trial, however, this was a proper charge. See State v. Belcher, 385

[2] Notably, Applicant admitted at the PCR hearing that he had intercourse with Victim, although he claimed it was consensual. This Court notes Victim's testimony about what occurred constituted direct evidence that this rape was NOT consensual.

S.C. 597, 612, 685 S.E.2d 802, 810 (2009), overruled by State v. Burdette, 427 S.C. 490, 832 S.E.2d 575 (2019) ("The permissive inference charge concerning the use of a deadly weapon remains a correct statement of the law where the only issue presented to the jury is whether the defendant has committed murder (or assault and battery with intent to kill)."). Specifically, at Applicant's trial, no evidence was presented to excuse, justify, reduce, or mitigate the homicide. Rather, this case hinged on identity. Thus, under Belcher, the charge was proper, and counsel was not deficient for not objecting.

Although the Supreme Court of South Carolina recently held such an instruction is no longer proper, that case was decided in July 2019—over a year *after* Applicant's May 2018 trial. See State v. Burdette, 427 S.C. 490, 503, 832 S.E.2d 575, 582 (2019) ("A jury instruction that malice may be inferred from the use of a deadly weapon is an improper court-sponsored emphasis of a fact in evidence—that the deed was done with a deadly weapon—and it should no longer be permitted."). Because the charge was proper at the time of trial, counsel was not ineffective for not objecting. See Gilmore v. State, 314 S.C. 453, 457, 445 S.E.2d 454, 456 (1994) ("We have never required an attorney to be clairvoyant or anticipate changes in the law . . . ." (overruled on other grounds by Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999))). Thus, this claim is denied.

Failed to effectively impeach witness testimony including Clifford Brown and the investigator

Finally, Applicant contends counsel was ineffective for not effectively impeaching witness testimony, including that of his cousin Clifford Brown and the investigator. This Court finds Applicant did not prove this claim.

At the PCR hearing, Applicant did not set forth what specifically counsel should have done to further impeach Brown or any investigator. In fact, when questioned about this issue, Applicant responded, "I can't remember." Applicant likewise did not set forth what other witness he believed

counsel should have further cross-examined or impeached. Applicant thus did not meet his burden of proving deficiency.

Likewise, when questioned about her strategy in cross-examining Brown, counsel relayed his testimony was not really damaging, and if you aren't careful when cross-examining a witness like that, you could open Pandora's box. Counsel further explained that if testimony doesn't hurt your case, digging in could potentially make it worse. Based on counsel's foregoing testimony, this Court finds counsel articulated a valid strategy in cross-examining Brown and a valid reason for not further cross-examining him and thus was not deficient. Finally, Applicant offered no testimony or evidence at the PCR hearing as to what more counsel should have done to cross-examine Brown, the investigator, or any other witness, and thus did not prove prejudice. Thus, this claim is denied.

CONCLUSION

Based on the foregoing, this Court concludes Applicant has not established any constitutional violations that would require this Court to grant relief. The application should be and is therefore denied and dismissed with prejudice.

Should Applicant wish to secure appellate review, 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), SCRCP. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and

2. Applicant shall be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED!

J. Derham Cole
Presiding Judge
Fourteenth Judicial Circuit

August 7, 2024
Spartanburg, South Carolina

STATE OF SOUTH CAROLINA
THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT

J. DERHAM COLE
JUDGE

180 MAGNOLIA STREET, 2ND FLOOR
POST OFFICE BOX 1744
SPARTANBURG, SOUTH CAROLINA 29304-1744
TELEPHONE: (864) 596-2685
FAX: (864) 596-3592
E-MAIL: jcolej@sccourts.org

August 7, 2024

The Honorable Jerri Ann Roseneau
PO Box 1128
Beaufort, SC 29901-1128

Re: 2022-CP-07-2323
Anthony Best, SCDC #264066 v. The State of South Carolina

2023-CP-07-1369
Isaiah Gadson, Jr., SCDC #235912 v. The State of South Carolina

Dear Clerk;

Enclosed please find for filing an order(s) with reference to the above-captioned case(s). Upon entry of the order(s), please serve notice upon the affected parties in accordance with *Rule 77(d) of the South Carolina Rules of Civil Procedure.* Thank you in advance for your usual and capable assistance in this matter.

With kindest personal regards, I remain,

Sincerely yours,

J. Derham Cole
Resident Judge
The Seventh Judicial Circuit

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2023CP0701369

Isiah Gadson Jr		**South Carolina State Of**	
PLAINTIFF(S)		**DEFENDANT(S)**	
Submitted by:		**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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☒ Other: Application for PCR is Denied & Dismissed With Prejudice

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ 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.

s/ J. Derham Cole	**2053**	8/7/2024
Circuit Court Judge	**Judge Code**	**Date**

For Clerk of Court Office Use Only

This judgment was entered on **August 13, 2024**, and a copy mailed first class or placed in the appropriate attorney's box on **August 15, 2024**, to attorneys of record or to parties (when appearing pro se) as follows:

Isiah Gadson Jr #235912 Ridgeland Corr. Inst. G-B-4 Post Office Box 2039 Ridgeland, SC 29936
Chelsey Faith Marto PO Box 8795 Columbia, SC 29201

Danielle Dixon PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Jerri Ann Roseneau - 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.