

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM JASPER COUNTY
Court of Common Pleas
The Honorable J. Derham Cole, PCR Action Judge
2021-CP-27-00378

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Sep 10 2024

S.C. SUPREME COURT

ROHAIME HOPKINS, #235915,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Rohaime Hopkins 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 20, 2024.

/s Chelsey F. Marto
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STATE OF SOUTH CAROLINA)
 COUNTY OF JASPER)
)
 Rohaime Jamar Hopkins, SCDC #235915,)
)
 Applicant,)
 v.)
 The State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 The FOURTEENTH JUDICIAL CIRCUIT

ORDER OF DISMISSAL

Civil Action No. 2021-CP-27-00378

FILED
 JASPER COUNTY
 CLERK OF COURT
 2024 AUG 13 AM 9:04

This matter came before the Court on May 7, 2024 for an evidentiary hearing pursuant to an application for post-conviction relief (“PCR”) filed September 7, 2021 by Rohaime Jamar Hopkins (“Applicant”). Applicant was present with counsel Chelsey F. Marto, Esq. Assistant Attorney General Bryan T. Hall appeared for the respondent.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections (“SCDC”) serving a life sentence. During its June, 2015 term, the Jasper County Grand Jury indicted Applicant for murder (2015-GS-27-00144). This charge arose from an incident in which Applicant shot and killed Terrence Johnson (“Victim”) to collect a cash reward for a hit that was placed on Victim.

Applicant proceeded to a jury trial May 15-17, 2017 before Circuit Judge Perry Buckner. Assistant Solicitors Mary Jones and Brian Hollen prosecuted the case. Scott W. Lee, Esq. (“Counsel”) represented Applicant. The jury convicted Applicant as indicted and he was sentenced to life imprisonment. On May 25, 2017, a timely notice of appeal was filed on Applicant’s behalf by Counsel. On appeal, Applicant was represented by Chief Appellate Defender Robert M. Dudek (“Appellate Counsel”) who filed a brief raising the following issues.

TRUE COPY
 MARGARET BOSTICK
 CLERK OF COURT
 JASPER COUNTY, SC
 BY: *[Signature]*
 DATE: 8-20-2024

1. Whether the court erred by admitting the cell phone and text message evidence (State's exhibits 7-9), since the probative value of that evidence was substantially outweighed by its unduly prejudicial effect under Rule 403, SCRE, the exhibits were not statement against penal interest as the court ruled, and they were confusing to the jury, including the text message, which even if sent by appellant was ambiguous and where the court ruled the Verizon Wireless records custodian did not have the expertise necessary to impart the cell tower evidence to the jury?
2. Whether the court erred by not exercising its discretion to exclude Michael Taylor's testimony which claimed that appellant burned his clothes in a barrel outside Taylor's home on the night of the murder, since Taylor made this claim for the first time on the day of the trial, the defense had no notice of this newly claimed devastating evidence prior to that time – which violated fundamental fairness since it was 'trial by ambush' – and the court had the inherent authority, and duty, to ensure appellant received a fair trial?

On August 19, 2020, following briefing and without oral argument, the Court of Appeals affirmed Applicant's conviction and sentence determining (1) the argument regarding the cell phone records was not preserved for appellate review; (2) the trial court did not err in admitting the text message because the text was circumstantial evidence of guilt and its probative value was not substantially outweighed by prejudice or confusion to the jury; (3) there was no violation of

Rule 5 because the State provided the defense with immediate notice of the information from Taylor when the State learned of it. *State v. Hopkins*, 431 S.C. 560, 848 S.E.2d 368 (Ct. App. 2020). The Remittitur was sent on September 9, 2020.

CURRENT APPLICATION

Applicant timely commenced this PCR action on September 7, 2021, alleging he is being held in custody unlawfully for the following reasons:

Ineffective Assistance of Counsel

- a. Conspiring under color of law with the prosecutor to violate Applicant's constitutional right of autonomy to prevent issues from being heard.
- b. Failure to discover jurisdiction issues

Due Process Violation

Lack of Subject Matter Jurisdiction

Prosecutorial misconduct and fraud upon the court for signing commitment orders when jurisdictional challenges existed.

On December 20, 2021, Respondent filed a return and moved for a more-definite statement on Applicant's claims. Applicant amended his application to raise the following allegations:

Ineffective Assistance of Counsel

- a. Failure to argue Applicant's police statement was involuntary and made unknowingly.
- b. Failure to object to Richard Johnson commenting on what Simmons said on hearsay grounds. [Tr. 337-38]

- c. Failure to timely object to the cellphone records being entered (St.'s Ex. 7 & 8).
- d. Failure to object to Milbrodt's testimony as a records custodian.
- e. Failure to effectively cross-examine the State's witnesses concerning inconsistencies in their statements.
- f. Failure to attack the credibility of Applicant's pod-mate concerning what he said Applicant told him about the crime.

Ineffective Assistance of Appellate Counsel

Failure to raise on appeal the court's decision to allow the text message into evidence (St.'s Ex. 9) because the court erroneously found texts were an admission by a party opponent.

At the evidentiary hearing, Applicant proceeded *solely* on the allegations contained in his amended application, and only those issues are before this Court for consideration. Before this Court are the Jasper County Clerk of Court records of the subject conviction; Applicant's records from SCDC; the appellate record; the trial transcript; and the records of the current PCR action.

TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

Applicant's Testimony

At the evidentiary hearing, Applicant testified that he met with Counsel a few times, during which they discussed witnesses, but Applicant believed Counsel's representation could have been better. Applicant testified that Counsel did not move to suppress Applicant's statement to police, and averred such motion would have helped the outcome of trial. Applicant testified Counsel's objection to the cellphone records was untimely, and the cellphone records affected the case

because it placed Applicant at a certain place and time. Applicant averred the cellphone records custodian gave expert testimony without being qualified. Applicant further averred that Counsel did not effectively cross-examine witness Byron Singleton, his pod-mate, and wished Counsel had discredited Singleton. Applicant testified that he wished Counsel would have objected to Richard Johnson's testimony regarding what Drayton Simmons said, and Applicant averred the testimony was unfavorable. Applicant testified that he heard for the first time at trial Michael Taylor's testimony regarding the burning clothes, and Applicant believed Counsel should have objected. Regarding his appeal, Applicant testified that he wished Appellate Counsel would have raised the issue of the trial court's decision to allow the text messages into evidence as an admission by a party opponent and believed exclusion of the text messages could have resulted in a different outcome.

Trial Counsel's Testimony

Scott Lee ("Counsel") testified that Applicant was served with notice of the State's intent to seek life without parole, and trial was held six (6) months after Counsel was retained. Counsel testified that he met with Applicant approximately five (5) to eight (8) times while Applicant was in jail, and was prepared for trial. Counsel testified that his defense theory and strategy for trial was to argue that Antoine Drake committed the murder, not Applicant.

Counsel testified that he moved for a *Jackson v. Denno* hearing to exclude statements Applicant made to police but there was no evidence that Applicant's statement was coerced or made involuntarily. Counsel further testified that he believed Applicant's statement to police was helpful to Applicant. Regarding Byron Singleton, Counsel testified that Singleton's testimony was suspect, and Counsel tried to cross-examine him on his motive for testifying. Regarding the burn barrel, Counsel testified that although he was upset that the information came out at trial, the

solicitor received the information at trial as well, and Counsel objected. Regarding the cellphone records, Counsel testified the court excluded expert testimony from the cellphone expert. Counsel testified that Karen Milbrodt read the cellphone records and was not testifying as an expert, and Counsel did not think her testimony was harmful to the case. Regarding Richard Johnson's hearsay testimony, Counsel testified that he did not object because the testimony involved information from an incident that occurred weeks ago, and Counsel believed the Johnson's testimony supported Counsel's defense theory that Antoine Drake committed the crime.

Appellate Counsel's Testimony

Chief Appellate Defender Robert Dudek ("Appellate Counsel") testified that he has over thirty (30) years of appellate experience. Appellate Counsel testified that when he receives a case, he takes notes, reads the trial transcript, and conducts legal research to determine which issues have the best chance of winning on appeal. Appellate Counsel testified that the Court of Appeals found the text messages were circumstantial evidence of guilt. Appellate Counsel testified that the Court of Appeals disagreed with Appellate Counsel substantively on the issue that the text message was a statement against interest. Appellate Counsel testified that the cell phone records issue was unpreserved but he believed the issue was of equal importance.

Solicitor's Testimony

Assistant Solicitor Mary Jones testified that the State's evidence included testimony from several witnesses who saw Applicant, with a gun, leave a wake service with the Victim on the night of the murder. Jones testified that there was testimony from Latanya Singleton, who testified that Applicant came to her house with Victim on the night of the murder. Jones testified Applicant later returned to Singleton's house asking for bleach. Jones testified that the Victim's body was found in the Victim's car several yards away from Singleton's house. Jones testified Applicant's

fingerprints were found in Victim's car. Jones testified that the State entered into evidence cellphone records that showed Applicant's and Victim's cellphones were pinging from the same cell tower around the time of the murder. Jones testified that the trial judge excluded expert testimony about the cellphone records, and Karen Milbrodt read what the records stated and did not give expert testimony. Jones testified that the State entered evidence of a text message from Applicant to Trey Graves, who put the hit on Victim, stating "dats done, need to holla at you." Jones also testified that she believed there was sufficient evidence for the jury to convict Applicant beyond a reasonable doubt even if the cellphone records had been excluded.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the trial transcript in its entirety and has heard the testimony at the PCR hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony. 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 facts and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations. Rule 71.1(e), SCRPC; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). An applicant alleging ineffective assistance of counsel must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. at 441, 334 S.E.2d at 813. "The test for effective assistance of counsel is whether the representation was within the range of competence

demanded of attorneys in criminal cases.” *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler*, 286 S.C. at 441, 334 S.E.2d at 813. An applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

To establish ineffective assistance of counsel, a PCR applicant must prove (1) counsel’s performance fell below an objective standard of reasonableness and (2) the applicant sustained prejudice as a result of counsel’s deficient performance. *Strickland*, 466 U.S. at 687–88; *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625. Applicant must prove prejudice by showing “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.

Strickland requires that trial counsel be given leeway to make reasonable strategic decisions. *Strickland*, 466 U.S. at 688-89 (stating “[n]o particular set of detailed rules for counsel’s conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant.”). Judicial scrutiny of counsel’s performance must be highly deferential. *Id.* at 689.

Failure to Argue Applicant’s Statement to Police was Involuntarily and Unknowingly

This Court finds Applicant failed to prove counsel was ineffective for failing to argue Applicant’s statement to police was made involuntarily and unknowingly. This Court finds credible Counsel’s testimony that a *Jackson v. Denno* hearing was held by the trial court, and there was no evidence that the statement was made involuntarily. This Court also finds credible Counsel’s testimony that he believed the statement was helpful to Applicant’s defense. Further, this Court finds the record reflects the trial court held a hearing pursuant to *Jackson v. Denno* and

found that Applicant knowingly and intelligently waived his Fifth Amendment right to remain silent. (R. 93-109). Applicant has failed to meet his burden.

Failure to Make Objections to Richard Johnson's Testimony on Statements by Daytron Simmons on Hearsay Grounds

This Court finds Applicant failed to prove Counsel was ineffective for failing to object to Richard Johnson's testimony on Statements by Daytron Simmons on hearsay grounds (R. 229:14-330:1-3; Tr. 337:14-338:1-3). Failing to object does not automatically constitute ineffective assistance of counsel. *See Millidge v. State*, 422 S.C. 366, 374, 811 S.E.2d 769, 800-01 (2018) (stating an applicant must prove both deficiency and prejudice to establish ineffective assistance of counsel for failing to object). This Court finds credible Counsel's testimony that he did not object to the hearsay statements because Counsel believed the statements supported the defense's theory that Antoine Drake committed the murder, instead of Applicant. This Court finds Counsel articulated a reasonable strategic decision for not objecting. Further, this Court finds Applicant failed to prove prejudice by showing a reasonable probability the result of trial would have been different if Counsel had objected. Thus, Applicant failed to meet his burden.

Failure to Timely Object to the Admission of Cellphone Records

This Court finds Applicant failed to prove he was prejudiced by Counsel's failure to object to object to the admission of cellphone records (St.'s Ex. 7-8). Failing to object does not automatically constitute ineffective assistance of counsel. *See Millidge*, 422 S.C. at 374, 811 S.E.2d at 800-01 (stating an applicant must prove both deficiency and prejudice to establish ineffective assistance of counsel for failing to object). This Court finds credible Jones' testimony that she believed the State had sufficient evidence for the jury to convict Applicant beyond a reasonable doubt even if the records had been excluded. Further, upon review of the entire record,

this Court finds there was sufficient evidence for the jury to convicted Applicant beyond a reasonable doubt even if Counsel had objected and the cellphone records were excluded. Thus, Applicant failed to meet his burden by showing a reasonable probability the result of trial would have been different if Counsel had object to the admission of the cellphone records.

Failure to Object to Karen Milbrodt's Testimony as a Cellphone Records Custodian

This Court finds Applicant failed to prove Counsel was ineffective for failing to object to Karen Milbrodt's testimony as a records custodian. (R. 438). This Court finds credible Counsel and Jones' testimonies that the trial court did not qualify Milbrodt as an expert to give an opinion on the use of cellphone towers but ruled Milbrodt could testify as a records custodian. (R. 429). This Court also finds credible Counsel and Jones' testimonies that Milbrodt did not give expert testimony but merely read the cellphone records as a records custodian. (R. 238). Additionally, this Court finds Applicant failed to prove he was prejudiced by showing a reasonable probability the result of trial would have been different if Counsel had objected to Milbrodt's testimony. Thus, Applicant failed to meet his burden.

Failure to Effectively Cross-Examine the State's Witnesses for Inconsistent Statements

This Court finds Applicant failed to prove Counsel was ineffective for failing to effectively cross-examine the State's witnesses for inconsistent statements. Upon review of the entire record, this Court finds Counsel's cross-examination of witnesses was reasonable under prevailing professional norms, and thus was not deficient. Further, Applicant failed to specify which of the State's witnesses he believed Counsel should have cross-examined more effectively, and Applicant failed to prove prejudice by showing a reasonable probability the result of trial would have been different if Counsel had developed a different strategy for cross-examination. Thus, Applicant failed to meet his burden.

Failure to Attack the Credibility of Applicant's Pod-mate, Byron Singleton, Concerning Statements Applicant Made to Him about the Crime

This Court finds Applicant failed to prove Counsel was ineffective for failing to attack the credibility of Byron Singleton, Applicant's pod-mate, concerning statements Applicant made to Singleton about the crime. Singleton testified at trial that Applicant told him that Applicant shot and killed Victim. (R. 327). On cross-examination, Counsel questioned Singleton about his motives and bias including Singleton's hope that he would receive a deal from the solicitor's office. (R. 330-34). Counsel also cross-examined Singleton regarding Singleton's conversations with Antoine Drake, consistent with the defense's theory that Antoine Drake committed the murder. (R. 333-34). This Court finds credible Counsel's testimony that he attempted to cross-examine Singleton regarding his motive for testifying. This Court finds Counsel's cross-examination of Singleton was reasonable under prevailing professional norms, and thus was not deficient. Further, this Court finds Applicant failed to prove prejudice by showing a reasonable probability the result of trial would have been different if Counsel had developed a different strategy for cross-examining Singleton. Thus, Applicant failed to meet his burden.

Ineffective Assistance of Appellate Counsel

Failure to Raise as an Issue on Appeal the Court's Decision to Admit a Text Message from Applicant as an Admission by a Party Opponent

This Court finds Applicant failed to prove Appellate Counsel was ineffective for failing to raise and argue the admission of the text message as an admission by a party opponent as an issue on appeal. In analyzing ineffective assistance of appellate counsel, the court applies the *Strickland* test just as it would when analyzing a claim of ineffective assistance of trial counsel. *Bennett v. State*, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009) (providing applicant must prove appellate

counsel's performance was deficient and must prove prejudice by showing a reasonable probability the result of the proceeding would have been different but for counsel's errors).

This Court finds Appellate Counsel's performance was reasonable under prevailing professional norms, and thus was not deficient. The trial court ruled a text message from Applicant to Trey Graves shortly after the murder was admissible as an admission by a party opponent. (St.'s Ex. 9; R. 405-08). This Court finds credible Appellate Counsel's testimony that, in his experience as an appellate attorney, he did not believe the appellate court would have ruled in Applicant's favor if Appellate Counsel had raised as an issue the trial court's admission of the text message as a party opponent admission because the appellate court disagreed with Appellate Counsel substantively on the admissibility of the text message. This Court also finds, as a matter of law, that the text message was admissible under Rule 801(d)(2), SCRE as an admission of a party opponent because Applicant was a party to the criminal trial. Further, Applicant failed to prove prejudice by showing a reasonable probability the result of his appeal would have been different but for Appellate Counsel's failure to raise the issue. Thus, Applicant failed to meet his burden.

CONCLUSION


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

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 for satisfaction of the sentence imposed.

Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty (30) 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 an 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.

AND IT IS SO ORDERED!



J. DERHAM COLE
Presiding Judge
Fourteenth Judicial Circuit

August 7, 2024
Spartanburg, South Carolina