

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

Emory W. Roberts, Jr. #373393,

Applicant,

v.

State of South Carolina,

Respondent.

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Case No.: 2020-CP-08-01349

ORDER OF DISMISSAL

FILED
2024 AUG 29 PM 12:08
LEAH GUERRY DUPRE
CLERK OF COURT
BERKELEY COUNTY, S.C.

This matter is before the Court by way of an application for post-conviction relief, CR-20-00000, filed by Emory W. Roberts (Applicant) on July 2, 2020. Respondent made its return requesting an evidentiary hearing. On April 18, 2023, an evidentiary hearing convened before the Honorable R. Kirk Griffin. Applicant was present and proceeded pro se.¹ Assistant Deputy Attorney General Taylor Z. Smith represented Respondent. At the hearing, the Court heard testimony from trial counsel Timothy L. Griffith, Esquire; SLED Agent Justin Wingo; Appellate Defender Susan Hackett; Assistant Attorney General Joshua Underwood; and Assistant Attorney General David Fernandez. Following a thorough review of the records before this Court and the testimony 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 presently confined in the Department of Corrections serving an aggregate twenty-five-year sentence. In April 2016, the South Carolina State Grand Jury indicted Applicant and five co-conspirators under a multi-count indictment stemming from an investigation into a

¹ Applicant was previously appointed counsel, but counsel was relieved at Applicant's request, and Applicant was permitted to proceed pro se.

CC: D. SNOPE, D. DIXON 08/29/2024 [Signature]

drug trafficking ring throughout Dorchester and Berkeley Counties (2016-GS-47-02). Applicant was indicted for trafficking heroin, twenty-eight grams or more; trafficking heroin, between four and fourteen grams; three counts of distribution of heroin; one count of possession with intent to distribute (PWID) methamphetamine, and one count of possession of a firearm during the commission of a violent crime.

On November 24-28, 2017, Applicant and codefendant Justin Hunter² proceeded to a jury trial before the Honorable Deadra L. Jefferson. Timothy Griffin, Esquire, represented Applicant, and Assistant Attorney Generals Joshua Underwood and David Fernandez prosecuted the case. The jury convicted Applicant as indicted, and Judge Jefferson sentenced him to concurrent terms of twenty-five years for trafficking heroin, twenty-eight grams or more; fifteen years for each distribution of heroin charge; fifteen years for trafficking in heroin, four grams to fourteen grams; fifteen years for PWID methamphetamine; and five years for the weapon charge.

Applicant filed a notice of appeal, which was perfected by Appellate Defender Susan B. Hackett. On appeal, Applicant argued the trial court violated his right to self-representation by denying his request to proceed pro se. The Court of Appeals affirmed on the merits. State v. Roberts, 2020-UP-017 (filed January 29, 2020). Applicant filed a petition for a rehearing, which was denied. Applicant also filed a petition for a writ of certiorari in the Supreme Court of South Carolina, which was denied. The remittitur was sent October 19, 2020.

CURRENT APPLICATION

On June 2, 2020, Applicant filed this PCR application alleging:³

² Hunter was tried in his absence; he was represented by Theresa Johns, Esquire.

³ Applicant filed this application while his direct appeal was pending, and the State initially filed a return and motion to dismiss without prejudice due to the pending appeal. However, after the remittitur was sent, the State filed an amended application requesting an evidentiary hearing.

1. Denied 6th and 14th Amendment to be informed of nature and cause: Denied notice;
2. Judicial misconduct: trial court exceeded its jurisdiction to impose sentence, trial court committed 'fraud on the court';
3. Ineffective assistance of counsel: Trial counsel conspired with prosecution on unfounded offenses;
4. Prosecutorial misconduct: prosecutor impaired grand jury's independent role.

As relief, Applicant requested "For sentence to be vacated and indictment dismissed with prejudice." Applicant attached to his application a "brief" further addressing his claims.

On May 13, 2021, Applicant filed a "subsequent application," which this Court construes as an amended application. In this application, he alleged:

- a. Conspiracy against public justice;
- b. Corruption;
- c. Prosecutorial misconduct – Brady violation;
- d. Fraud upon the Court;
- e. Judicial Misconduct;
- f. Ineffective assistance of counsel;
- g. Perjury;
- h. Lack of subject matter jurisdiction to convict;
- i. Due process violations;
- j. Ineffective appellate counsel;
- k. Trial court error;
- l. Lack of indictment, etc.

Applicant attached nine "briefs" to his application in support of his claims. At the PCR hearing,

he focused primarily on his claim that the State Grand Jury did not meet to indict him and the Court thus lacked subject matter jurisdiction.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the State Grand Jury Clerk of Court records of the underlying convictions; Applicant's records from the South Carolina Department of Corrections; the trial transcript, the records of Applicant's direct appeal; and the records of this PCR application. This Court has further had the opportunity to observe the witnesses presented at the PCR hearing, closely pass upon their credibility, and weigh their testimony accordingly.⁴ 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).

Due process violation

Applicant first raises a due process violation. Specifically, he contends he was denied notice of his charges. In his initial application, he poses the following "questions," which this Court construes as allegations related to his claim of a due process violation:

1. Whether defendant's right to due process of law and equal protections under the law to be informed of the nature and cause of accusation [was] violated when no State Grand Jury convened to consider criminal allegations against him?
2. Whether defendant's right to due process of law was violated when he was held for trial and convicted of crimes and offenses without indictment by grand jury?
3. Whether defendant's right to due process and equal protections under the law and his right to have the indictment issued by a legally

⁴ This Court will reference PCR testimony where relevant below.

constituted Grand Jury was violated?

4. Whether the State Grand jury lacked subject matter jurisdiction based on nullity indictment?

5. Whether defendant's right to due process of law and equal protections under the law was violated when no court reporter was assigned to record Grand Jury proceedings?

6. Whether defendant's right to due process of law and equal protections under the law [was] violated when defendant was denied the empanelment documents before a jury being sworn?

7. Whether defendant's right to due process of law and equal protections under the law was violated when prosecutor encouraged false testimony and defendant was accused of crimes not investigated by a Grand Jury, and AAGs allowed government agents to make false and misleading statements prejudicing defendant?

9. Whether the Court lacked subject matter jurisdiction to convict and sentence defendant for offenses for which he was not indicted?

10. Whether prosecutor's return of fraudulent indictment constitutes fraud upon the court and defendant's rights?

11. Whether a State Grand jury convened in Petitioner's case on the dates of April 12-13, 2016?

Applicant repeats many of these arguments in his Amended Application and nine "briefs" attached to this application. In addition, he raises the following arguments pertinent to due process:

12. Whether defendant's due process of law and equal protections under the law violated when he was not able to mount or prepare a defense due to prosecutor's misconduct and trial judge's prejudicial ruling?

13. Whether trial court violated defendant's due process of law and equal protections under the law when trial judge relieved prosecution's 'burden of proof' to explain why the 'impanelment documents' should not be released pursuant to Rule 5(d)?

14. Whether defendant's rights pursuant to §§ 17-7-1610 and 14-7-1630(A)(1), and defendant's due process of law, violated when he was 'infringed' his right to challenge the subject matter jurisdiction

of the State Grand Jury?

15. Whether the denial of impanelment documents constitutes a structural error?

16. Whether trial court lacked subject matter jurisdiction to “convict” and “sentence” defendant on unindicted offenses in violation of § 17-19-10, §17-25-10, and defendant’s right to due process of law and equal protections under the law? (Br. 3, pg. 1)

17. Whether trial court violated State Constitution and defendant’s due process of law and equal protection under the law, when defendant was denied his infringed right to challenge whether a legally constituted grand jury considered his case? (Br. 3, pg. 1)

18. Whether defendant’s due process of law violated when prosecution did not meet its burden of production on every element of the offense? (Br. 5, pg. 2)

19. Whether defendant’s right to due process of law violated when trial judge, trial counsel, Assistant Attorney Generals, and State Grand Jury Clerk committed conspiracy against public policy? (Br. 6, pg. 3)

20. Whether defendant was denied due process of law when he infringed his right to challenge the sufficiency of the evidence presented at the Grand Jury proceeding? (Br. 6, pg. 4)

21. Whether the State failed to prove beyond a reasonable doubt that the amount of heroin or any mixture containing heroin was 4 grams or more but less than 14 grams; 14 grams or more but less than 28 grams; and 28 grams or more? And whether this violated defendant’s due process of law? (Br. 8, pg. 2)

22. Whether defendant’s right to due process of law violated when all essential elements of guilt (purchase, or brought into this State) were not proven beyond a reasonable doubt? And whether the defendant suffered prejudice? (Br. 8, pg. 2)

23. Whether a rational trier of fact, viewing evidence in light most favorable to the prosecution, could have found the essential elements of the crime of trafficking heroin beyond a reasonable doubt?

This Court finds Applicant has not shown a due process violation.

Sufficiency of Indictment and meeting of State Grand Jury

This Court finds Applicant had sufficient notice of the charges and has failed to show a due process violation in this regard. Initially, this Court has reviewed the indictment in this case and finds it was sufficient to put Applicant on notice of the charges against him. See Evans v. State, 363 S.C. 495, 508, 611 S.E.2d 510, 517 (2005) (“The primary purposes of an indictment are to put the defendant on notice of what he is called upon to answer, i.e., to apprise him of the elements of the offense and to allow him to decide whether to plead guilty or stand trial, and to enable the circuit court to know what judgment to pronounce if the defendant is convicted. This required notice is a component of the due process that is accorded every criminal defendant.” (internal citations omitted)).

Many of Applicant’s claims center on his belief that the State Grand Jury did not meet and did not indict him. However, this Court finds credible the PCR testimony of Assistant Attorney General Joshua Underwood, who testified he was present when the State Grand Jury met and indicted Applicant. (PCR Tr. 121, 123, 127). Applicant has not presented any credible evidence that the grand jury proceeding was irregular, and this Court finds the State Grand Jury did in fact meet and indict Applicant. Thus, allegations 1, 2, 3, 4, 9, 10, 11, 16, and 17, as set forth above, lack merit and are denied.⁵

⁵ Applicant’s numerous arguments related to the trial court’s lack of subject matter jurisdiction also patently lack merit. See State v. Gentry, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005) (“Circuit courts obviously have subject matter jurisdiction to try criminal matters.”). Evans, 363 S.C. at 508, 611 S.E.2d at 517 (“In Gentry, then, we returned to our earlier view that an indictment is a “notice document,” albeit one required by our state constitution and statutes.”); id. (“The sufficiency of an indictment will no longer be considered an issue of subject matter jurisdiction.”).

Likewise, the State Grand Jury had jurisdiction to issue this indictment, which involved a drug ring located in Berkeley and Dorchester Counties; thus, allegation 14 as set forth above is denied. See S.C. Code Ann.

In arguing the State Grand Jury did not convene to indict him, Applicant relies on a letter addressed to Applicant from Court Administration that stated,

Your inquiry has been received by this office. The convening of the State Grand Jury is not dependent upon a term of General Sessions court and often does not meet at the same time as General Sessions terms. You are requesting a transcript from State Grand Jury proceedings. This is to advise that there is no court reporter assigned to record Grand Jury proceedings, and therefore, there is no transcript available.

However, at the PCR hearing, Underwood explained the State Grand Jury had a contract with Creel Reporting for transcription, which was separate from Court Administration, and the method for obtaining that transcript would be to go directly to the Court Reporter with Creel Reporting to obtain copies. (PCR 122-23). Based on Underwood's foregoing testimony, which this Court finds credible, this Court finds the letter from Court Administration is NOT proof that a transcript of this State Grand Jury proceeding did not exist. Rather, Court Administration did not have the transcript because Court Administration does not handle transcripts of State Grand Jury proceedings. Ultimately, Applicant has NOT provided clear evidence that the State Grand Jury proceeding was irregular and thus has not proven a due process violation. See Evans, 363 S.C. at 514, 611 S.E.2d at 520 ("The regularity of grand jury proceedings is presumed absent clear evidence to the contrary.").

Empanelment documents

Applicant also raises several due process claims related to the purported denial of the State Grand Jury's empanelment documents. In support, he references a portion of the trial transcript

§ 14-7-1630(A)(1) (providing the State Grand Jury has jurisdiction over "a crime involving narcotics, dangerous drugs, or controlled substances, or a crime arising out of or in connection with a crime involving narcotics, dangerous drugs, or controlled substances . . . if the crime is of a multi-county nature or has transpired or is transpiring or has significance in more than one county of this State.").

wherein he requested Rule 5 discovery—specifically audios and tapes⁶—and a transcript of the Grand Jury proceedings. (Trial Tr. 14-23, 85). However, Applicant did not produce any evidence that he timely requested the empanelment documents. See Evans, 363 S.C. at 504, 611 S.E.2d at 515 (2005) (“[W]e conclude impanelment documents, including the State’s petition, supporting materials, and the impaneling judge’s order, may be released to a defendant prior to trial upon timely request or to an applicant in a PCR proceeding.”).⁷ Critically, Underwood testified he provided trial counsel information about how to obtain the State Grand Jury transcripts; he did not withhold any discovery from Applicant or his counsel; he did not conceal the State Grand Jury empanelment documents from Applicant; and the empanelment documents were available for trial counsel’s review. (Tr. 122-23, 128). This Court finds Underwood’s foregoing testimony credible. Likewise, trial counsel credibly testified he received the indictments and discovery, and he did not believe he needed the impanelment documents to prepare a defense. (PCR Tr. 19). In the absence of a timely request, Applicant’s due process rights were not violated by the State’s alleged failure to provide the empanelment documents. Thus, allegations 6, 12, 13, and 15,⁸ as set forth above, are denied.

⁶ At trial, trial counsel relayed he had received the Rule 5 discovery and reviewed it with Applicant. (Trial Tr. 213). Additionally, the Court provided counsel time to review discovery with Applicant the first day of trial. (Trial Tr. 14, 75-76, 80). Further, this Court finds credible Underwood’s PCR testimony that he provided discovery to counsel and apprised counsel on the procedure for requesting the State Grand Jury transcripts. This Court likewise finds credible trial counsel’s PCR testimony that he received and reviewed discovery with Applicant. (PCR 20).

⁷ Although Applicant could have obtained the empanelment documents during the pendency of the PCR action, Applicant did not introduce any empanelment documents at the PCR hearing.

⁸ Likewise, any alleged “denial” of the impanelment documents does not constitute a structural error. See Carrier v. State, 441 S.C. 547, 895 S.E.2d 679 (2023) (finding misnomer on indictment did not constitute structural error).

Sufficiency of Evidence (18, 20, 21, 22, 23)

Finally, Applicant raises several claims related to the sufficiency of the State's evidence. Initially, counsel moved for a directed verdict, and any issue regarding the sufficiency of the evidence should have been raised on appeal rather than through this PCR action. See Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) (“[A]n application for post-conviction relief is not a substitute for an appeal.”); Drayton v. Eyatt, 312 S.C. 4, 8, 430 S.E.2d 517, 519 (1993) (“[E]rrors which can be reviewed on direct appeal may not be asserted for the first time, or reasserted, in post-conviction proceedings.”). Further, PCR is not a proper avenue to challenge the sufficiency of the evidence. See S.C. Code Ann. § 17-27-20(6) (providing the PCR Act “shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction”). Thus, allegations 18, 20, 21, 22, and 23, as set forth above, are denied and dismissed with prejudice.⁹

Trial court error

In his initial application, Applicant alleged “Judicial misconduct: trial court exceeded its jurisdiction to impose sentence, trial court committed ‘fraud on the court.’” In his brief attached to the initial application, he posed the following questions related to the trial judge, which this Court construes as allegations of trial court error:

1. Whether Petitioner’s right to due process of law and equal protection under the law [was] violated when trial court convicted

⁹ As to allegation seven, this Court finds credible Underwood’s testimony that he did not fraudulently convey any information to the courts about Applicant and the Grand Jury. (PCR 128). Applicant did not present any credible evidence that the solicitor knowingly elicited perjured testimony and thus did not prove a due process violation in this regard.

As to allegation 19, this Court finds credible Underwood’s testimony that he was not part of a conspiracy against Roberts. (PCR 128). Applicant did not present any credible evidence of conspiracy between the trial judge, trial counsel, the Assistant Attorney Generals, and the State Grand Jury Clerk, and this claim is denied.

defendant on unindicted offenses?

2. Whether Petitioner's right to due process of law and equal protection under the law [was] violated when trial judge denied Petitioner "impanelment documents," thereby denying Brady material to Petitioner? (And does this denial to prepare a defense constitute prejudice?)

3. Whether Petitioner's due process of law and equal protections under the law [was] violated when trial judge "inserted" herself into plea negotiations, in violation of Rule 11?

4. Whether Petitioner's right to due process of law and equal protections under the law [was] violated when trial judge infringed on defendant's right to obtain a copy of the transcript from State Grand Jury proceedings?

5. Whether Petitioner's due process of law and equal protections under the law [was] violated when Judge Jefferson "relieved prosecutor's burden of proof" pursuant to Rule 5(d), SCCrimP?

6. Whether trial judge failed to exercise her discretion, or abused her discretion, when Petitioner, in a criminal case, showed a 'particularized need' for access to Grand Jury transcript?

7. Whether trial judge committed "fraud on the court" and "fraud upon petitioner's legal rights? [conspired with prosecution to convict Applicant on unindicted offenses]

8. Whether trial judge conspired with prosecution to infringe on Petitioner's legal rights and liberty interest? [urged counsel to stipulate to COC, pg. 74-75]

9. Whether trial judge violated defendant's due process of law when the judge refused to allow Petitioner to present exculpatory evidence? (17, ln. 20-23; 19, ln. 8-18)

10. Whether trial judge infringed upon Petitioner's right to due process of law to have an "impartial" arbiter consider his case?

11. Whether trial judge infringed on defendant's right to present an alibi? [620]

12. Whether trial judge "initiated criminal charges" against Petitioner?

Applicant repeats many of these arguments in his Amended Application and nine “briefs” attached to this application. He raises the following additional arguments related to the trial judge:

13. Whether trial judge’s erroneous ruling defying defendant the State Grand Jury impanelment documents before a jury being sworn an abuse of discretion or a failure to exercise discretion? And whether defendant suffers prejudice?

14. Whether trial judge committed the act of actual or constructive fraud upon the court? And whether defendant suffers prejudice?

15. Whether trial judge infringed defendant’s due process of law and defendant’s 6th Amendment right to confrontation when as the gatekeeper she urged a stipulation of defendant’s chain of custody without colloquy?

In its amended return, Respondent moved to dismiss Applicant’s claims against the trial court, asserting PCR was not the proper forum to raise claims against the trial court.

This Court agrees with Respondent and grants Respondent’s motion to dismiss the claims against the trial court. See Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) (“[A]n application for post-conviction relief is not a substitute for an appeal.”); Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 519 (1993) (“[E]rrors which can be reviewed on direct appeal may not be asserted for the first time, or reasserted, in post-conviction proceedings.”).

To the extent any of these allegations raise due process claims that could not have been asserted on appeal, this Court reiterates its foregoing findings that Applicant was properly indicted, and Applicant failed to establish any due process violation. This Court further finds Applicant did not present any credible evidence that the trial court judge committed fraud; conspired with the prosecutors; tried Applicant on unindicted offenses; inserted herself into plea negotiations; infringed upon Applicant’s right to obtain the Grand Jury transcript; relieved the State of its burden of proof; refused to allow Applicant to present exculpatory evidence; was not impartial; initiated

criminal charges against Applicant; or urged trial counsel to stipulate to the chain of custody. Finally, this Court reiterates its finding that the trial court had subject matter jurisdiction. See Gentry, 363 S.C. at 101, 610 S.E.2d at 499 (“Circuit courts obviously have subject matter jurisdiction to try criminal matters.”). Thus, these claims are denied and dismissed with prejudice.

Ineffective Assistance of Counsel

Applicant contends counsel was ineffective for “conspiring with prosecution on unfounded offenses.” In his “brief,” Applicant alleged counsel was ineffective based on the following:

1. Counsel stipulated to the chain of custody for the evidence; (Tr. 74)
2. Counsel failed to object to and cite controlling precedent regarding impanelment documents (15, 9);
3. Counsel failed to object to codefendant’s out-of-court statements and confessions (Tr. 721-22);
4. Counsel refused to present alibi on defendant’s behalf;
5. Counsel refused to present exculpatory evidence to trial court; (Tr. 17)
6. Counsel acted as a second prosecutor at trial trying to convince defendant to take a plea (Tr. 235, 237).

In a PCR action, an applicant bears the burden of proving the allegations. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). In evaluating claims of ineffective assistance of counsel, courts apply the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. 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. “Counsel is strongly presumed to have rendered adequate assistance and made all significant

decisions in the exercise of reasonable professional judgment,” and an applicant must overcome this presumption to receive relief. *Id.*; *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. Second, a PCR applicant must prove the deficiency prejudiced him 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.

Conspiring with prosecution

Applicant first contends counsel was ineffective for “conspiring with prosecution on unfounded offenses.” This contention lacks merit. As noted, this Court finds credible Underwood’s testimony that the State Grand Jury did in fact meet to indict Applicant. This Court further finds credible trial counsel’s testimony that he was not a part of a conspiracy against Applicant. Applicant has not set forth any credible evidence that counsel conspired with the prosecution; thus, this claim is denied.

Stipulation to Chain of Custody

Applicant contends counsel was ineffective for stipulating to the chain of custody for the drug evidence. This Court finds Applicant did not prove counsel was ineffective in this regard.

At trial, counsel stipulated to the chain of custody for the drug evidence. (Tr. 74-75). Likewise, counsel for co-defendant stipulated to the chain of custody for the drug evidence, stating, “It looks to me like the chain of custody has been met.” (Tr. 74). At the PCR hearing, counsel credibly testified the State showed him the chain of custody, he did not have any concerns with the chain, and he did not see any grounds for suppressing the evidence due to a defect in the chain. Thus, this Court finds counsel’s decision to stipulate to the chain of custody was reasonable under prevailing professional norms and not deficient. This Court further finds Applicant did not set forth any deficiency in the chain of custody that would have led to the suppression of the drug evidence.

Thus, Applicant did not prove deficiency or prejudice, and this claim is denied.

Failed to object to not having impanelment documents

Applicant next contends counsel was ineffective for not objecting to and citing controlling precedent regarding the impanelment documents. This Court finds Applicant did not prove counsel was ineffective in this regard. Pertinently, at the PCR hearing, trial counsel credibly testified he had the indictment and the discovery, and he did not see the need to request the impanelment documents. This Court finds counsel's failure to request the impanelment documents was reasonable within prevailing professional norms and not deficient. Further, Applicant has not shown a reasonable probability the outcome would be different had counsel requested the impanelment documents. Specifically, this Court finds credible Underwood's testimony that the State Grand Jury did in fact meet and indict Applicant. Thus, it is not reasonably probable the charges would have been dismissed had counsel requested the impanelment documents. Applicant thus did not prove deficiency or prejudice, and this claim is denied.

Co-defendant's statement

Applicant contends counsel was ineffective for not objecting when Agent Wingo testified to statements made by co-defendant Justin Hunter, which violated the Confrontation Clause. This Court finds Applicant did not prove this ground. At the PCR hearing, trial counsel testified he did not believe the testimony was prejudicial to Applicant's case. He further testified he would have objected if he believed the testimony harmed or prejudiced Applicant's defense. This Court finds counsel's foregoing testimony credible. This Court further finds counsel articulated a valid reason for not objecting in that the testimony was not harmful to Applicant's case and Applicant thus did not prove deficiency. Further, this Court finds the testimony itself was not prejudicial to Applicant's defense. Specifically, Agent Wingo provided the following testimony about Hunter's

statement:

Mr. Hunter confessed that he was involved in trafficking heroin. He had been involved in trafficking heroin since winter of 2015. He said that he began trafficking heroin when he met a female down here named Sonia. He was introduced to another male through Sonya named R. I believe—he briefly bought heroin from R. He then began purchasing heroin from an individual known as B.K. And that went on for about six months. Then Mr. Huter told me that he would go to New York. He would fly to New York with the money for the heroin in his pocket, and he would stay at the specific hotel. And if I'm correct, the hotel is the Gateway Inn. And he told me address is 1780 Sunrise Highway. He would meet an individual at the Holte known as Fresh. And then he would have a female transport it back down.

He would go there and I think he bought—I would have to refer to my notes here. He bought 40 grams of heroin from Fresh for right around \$1,600. After that, Mr. Hunter gave me a list of customers that he would sell to. There was three specifically he told me about. One was a male named Parker. He would sell him around an eight-ball.

Another was a man named Chuck. Chuck was a white male, he had a girlfriend. He drove a work truck. Mr. Hunter told me he sold at least a gram.

And the third was an individual named Tom who he sold heroin through throughout Dorchester and Berkeley Counties.

(Tr. 721-22). Critically, although Hunter implicated several individuals in his statement, Agent Wingo did not testify that Hunter implicated Applicant. Applicant thus cannot show prejudice from counsel's failure to object to this testimony, and this claim is denied.

Alibi

At the PCR hearing, Applicant averred counsel was ineffective for not presenting evidence that he was detained in New York during the time the confidential informant purchased drugs from Applicant. Applicant did not prove this ground. Initially, this Court finds credible trial counsel's testimony that Applicant refused to speak to him prior to trial and did not raise this issue prior to trial. This Court likewise finds credible counsel's testimony that the dates Applicant claimed to be

incarcerated were different than the dates law enforcement relied on. Thus, counsel articulated a valid reason for not presenting an alibi and was not deficient. This Court further finds Applicant did not prove prejudice. Specifically, Applicant did not present credible evidence that he was actually detained in New York on the dates the confidential informant testified he purchased drugs from Applicant. Applicant thus did not prove prejudice, and this claim is denied.

Exculpatory evidence

Applicant contends counsel was ineffective for not presenting exculpatory evidence at trial. Applicant did not prove this grounds. At the PCR hearing, trial counsel testified credibly that he reviewed the State's evidence with Applicant. As set forth above, this Court finds the letter from Court Administration did not prove the State Grand Jury did not meet; thus, this letter does not constitute exculpatory evidence. Applicant did not clearly set forth any other evidence he believed was exculpatory or introduce such evidence at the PCR hearing. Applicant thus did not meet his burden of proving deficiency or prejudice, and this claim is denied.

Plea negotiations

Applicant contends counsel was ineffective in "acting as a prosecutor" and attempting to coerce him to plead guilty. This claim lacks merit. At the PCR hearing, counsel credibly testified he spoke with Applicant during trial about whether he wanted to plead guilty, but Applicant did not wish to do so. This Court finds counsel's performance in this regard reasonable under prevailing professional norms and not deficient. Further, Applicant cannot demonstrate prejudice because he, in fact, did not enter into a plea. This claim is thus denied.

Prosecutorial Misconduct

Applicant contends the prosecutor impaired the Grand Jury's independent role. In his brief, Applicant raised the following questions related to his prosecutorial misconduct claim:

1. Whether prosecutor's misconduct was a significant infringement on grand jury's ability to exercise independent judgment, as would support dismissal of indictment?
2. Whether defendant suffered prejudice from prosecutorial misconduct?
3. Whether prosecutor's misconduct constitutes a violation of defendant's due process of law?
4. Whether defendant suffered deprivation of the right to indictment by Grand Jury pursuant to § 17-19-10, and whether this constitutes structural error?
5. Whether the accumulation of misconduct by prosecutors infringed on defendant's 'substantive' due process rights where defendant has a 'liberty' interest, when in violation of Art. V § 22?
6. Whether this defect affects substantial rights secured by the 14th Amend. Due process and equal protections under the law?
7. Whether prosecutor violated Petitioner's procedural and substantive due process of law when prosecutor had not disclosed favorable evidence (impanelment documents), governed by materiality standard? And whether this denial constitutes "prejudice" as well as a Brady violation?
8. Whether prosecutor committed "fraud on the court" and fraud against Petitioner's legal rights?
9. Whether prosecutor "conspired" to infringe upon Petitioner's liberty interest?
10. Whether prosecutor infringed Petitioner's right pursuant to section 14-7-1720(A) and (D) and Rule 5, SCRCrimP?
11. Whether Petitioner's right to due process of law and equal protections under the law [was] violated when Petitioner was denied the equal protections of the laws in constitutional and statutory provisions relating to Grand Jury? When "no court reporter had been assigned to record State Grand Jury proceedings?"

This Court finds Applicant did not prove prosecutorial misconduct. Applicant's allegations in this regard center on his belief that the State Grand Jury did not meet to indict him. This Court finds

credible Underwood's testimony that the State Grand Jury did, in fact, meet to indict Applicant. This Court further finds credible Underwood's testimony that he would have provided impanelment documents had they been requested. This Court finds Applicant has not set forth a Brady violation, a due process violation, or evidence that the prosecutor committed fraud on the court, conspired against Applicant, or infringed upon the Grand Jury's ability to exercise independent judgement. This claim is thus denied.

Ineffective Assistance of Appellate Counsel

Applicant contends appellate counsel was ineffective for not raising on appeal the issues regarding the Grand Jury impanelment documents, the letter from Court Administration (which he contends constitutes exculpatory evidence), the circuit court's alleged lack of subject matter jurisdiction, or a conflict of interest with trial counsel. These allegations lack merit.

Initially, this Court finds credible appellate counsel's testimony that she briefed what she believed to be the best issue on appeal—the denial of Applicant's right to represent himself. This Court further finds credible appellate counsel's testimony that she did not raise the issue regarding impanelment documents because it was raised by Applicant while he was represented by counsel, which constituted hybrid representation and thus would not have been ripe for appeal. She further credibly testified she did not believe the letter from Court Administration constituted evidence that the State Grand Jury did not meet; she did not believe the issue regarding the court's lack of subject matter jurisdiction had merit; she did not see any evidence that trial counsel labored under a conflict of interest; she did not raise an issue related to counsel's failure to present an alibi because that was a PCR matter rather than a direct appeal matter; she believed the State presented sufficient evidence of the amounts of heroin; and she didn't see any preserved issue related to the conspiracy charge. This Court thus finds counsel articulated valid reasons for not raising these issues and

Applicant thus did not prove deficiency. Applicant likewise did not prove prejudice, as he did not set forth any issue that would have likely caused the appellate courts to reverse his conviction on appeal. Thus, this claim is denied.

Remaining allegations

This Court finds Applicant did not present credible evidence of conspiracy against public justice; corruption; fraud upon the Court; judicial misconduct; or perjury; these claims are thus denied.

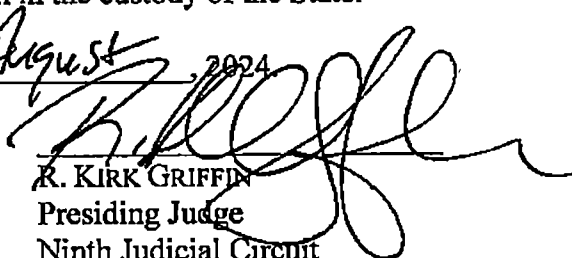
CONCLUSION


Based on the foregoing, this Court concludes Applicant has not established any constitutional violations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice. Should Applicant wish to appeal, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). If Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g), SCRCP. Attention is directed to Rule 243, SCACR, for appellate procedures.

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 THIS 26 day of August, 2024


R. KIRK GRIFFIN
Presiding Judge
Ninth Judicial Circuit

 , South Carolina



State of South Carolina
The Circuit Court of the Third Judicial Circuit

R. Kirk Griffin
Judge

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rgriffin@sccourts.org

August 26, 2024

Honorable Leah Guerry Dupree
Berkeley County Clerk of Court
Post Office Box 219
Moncks Corner, South Carolina 29461

RE: Emory W. Roberts, Jr., #373393 v State of South Carolina (2020-CP-08-01349)

Dear Ms. Dupree:

I am enclosing an Order of Dismissal in the above matter.

Please file the order and send certified copies to all attorneys of record.

If you have any questions, please let me know.

Yours very sincerely,

A handwritten signature in black ink, appearing to read "R. Kirk Griffin", written over a horizontal line.

R. Kirk Griffin

RKG, djf

Enclosures

2024 AUG 29 PM 12:32
LEAH GUERRY DUPREE
CLERK OF COURT
BERKELEY COUNTY, SC

FILED

Handwritten initials in black ink, possibly "LD", written to the right of the "FILED" stamp.