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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable J. Derham Cole, Circuit Court Judge

Case No. 2021-CP-07-02125

Ben Reed, IV, ...Petitioner,

v.

State of South Carolina, ...Respondent.

NOTICE OF APPEAL

Petitioner, Ben Reed, IV, appeals the order of the Honorable J. Derham Cole, dated December 23, 2024, and filed December 31, 2024. Petitioner received written notice of entry of this order on January 3, 2025.

1/9, 2025

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ATTORNEY FOR PETITIONER

Opposing Counsel:
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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	
Ben Reed, IV, SCDC #379241,	)	
Applicant,	)	**ORDER OF DISMISSAL**
v.	)	
State of South Carolina,	)	Civil Action No.: **2021-CP-07-02125**
Respondent.	)	

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Ben Reed, IV (Applicant) on November 12, 2021. On May 8, 2024, an evidentiary hearing was held with Applicant present and represented Michael H. Lifsey, Esquire. Assistant Attorney General Danielle Dixon represented the respondent. Applicant testified and called as a witness trial counsel Jeffrey Stephens. 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. Relief is denied and the application is dismissed with prejudice.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections serving an aggregate seventeen-year sentence. In January 2018, the Beaufort County Grand Jury indicted Applicant for two counts of Burglary Fist Degree (2017-GS-07-01853 and 01864). These charges arose from the burglary of Andrea Singleton's (Victim's) home on November 7, 2017 and again on November 17, 2017.

On February 19-21, 2019, Applicant proceeded to trial before Circuit Judge Robert E. Hood and a jury. Jeffrey Stephens, Esquire, represented Applicant. Assistant Circuit Solicitors Leigh Staggs and Jacob McFadden prosecuted the case. On the charge related to the November 17

burglary, the jury convicted Applicant of Burglary First Degree. On the charge related to the November 17 burglary, the jury convicted Applicant of the lesser-included offense of Burglary Second Degree.[1] Judge Hood sentenced Applicant to concurrent terms of seventeen years for Burglary First Degree and ten years for Burglary Second Degree.

Applicant filed a notice of appeal, which was perfected by Appellate Defender Adam Sinclair Ruffin. On appeal, Applicant argued the trial court erred in refusing to instruct the jury on the lesser-included offense of second-degree burglary (as to the second charge) when evidence showed the victim moved out of her home after the first burglary, thus changing the legal status of the structure from a dwelling to a building. The Court of Affirmed on the merits. State v. Reed, 2021-UP-327 (filed Sept. 15, 2021). The remittitur was sent October 4, 2021.

Summary of Evidence Presented at Trial

At 11:30 pm on November 7, 2017, police responded to a report of a burglary at Victim's home. Victim told officers that when she and her children returned home that evening, they saw an intruder fleeing the home. (R. 139). Officers discovered the kitchen window ajar and found the TV had been moved from the TV stand to the floor near the rear door. (R. 21–22). Some of Singleton's possessions were missing, including electronics and two guns. (R. 22).

The house was burglarized again ten days later while Singleton was at her mother's home. (R. 24, 148). A neighbor witnessed someone enter the home around 1:00 am and called the police. (R. 24). Police officers entered the house and found Applicant hiding in a closet. (R. 28–29). At the police station, Applicant confessed to breaking into Singleton's home on both occasions. (R. 71–73). Applicant's fingerprint was recovered from the kitchen window. (R. 126).

[1] The State conceded the "nighttime" aggravating element could not be considered as to the November 7 charge because it was not included in the indictment. (Tr. 307-08).

Current Application

On November 12, 2021, Applicant timely commenced his PCR action on November 12, 2021 alleging:

1. Ineffective Assistance of Counsel

    a. Counsel was ineffective for "failing to conduct a pre-trial investigation by failing to search Magistrate Judge file(s) for a copy of a search warrant to be issue to seize the Applicant['s] shoes."

As relief, Applicant requested "new trial vacate conviction and sentences."

Prior to the evidentiary hearing, Applicant amended his application to allege:

> Ineffective assistance of counsel:
>
> a. Counsel did not meet with Applicant a sufficient number of times, did not review discovery with him fully, did not fully explain the strengths and weaknesses of the State's case, and did not explain the elements of the crimes of which he was charged;
>
> b. Counsel did not convey the solicitor's initial plea offer of a Youthful Offender Act sentence in a timely enough fashion to allow Applicant to accept the offer before it was revoked;
>
> c. Counsel did not object to the improper circumstantial evidence charge in the pretrial instructions to the jury;
>
> d. Counsel's decision to rely on a defense that the resident was not a dwelling was not reasonable.
>
> e. Counsel's decision to argue in closing that the residence was not a dwelling even after being informed of the judge's decision not to charge the lesser-included offense served no reasonable strategic purpose and had no chance of success in light of the trial judge's decision.

At the hearing, Applicant proceeded only on the 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, the trial transcript, Applicant's appellate records, and the records of this PCR action. 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, 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 Meet

Applicant first contends counsel was ineffective for not meeting with him a sufficient number of times prior to trial, not fully reviewing discovery, not fully explaining the strengths and weaknesses of the State's case, and not explaining the elements of the crimes. This Court finds Applicant did not prove counsel was ineffective in this regard.

At the PCR hearing, Applicant testified he first met trial counsel at his first court date, and he met with him two more times after that. He stated he did not receive discovery "until my second plea deal." According to Applicant, his second plea offer was for twelve years on second-degree burglary, but Applicant did not accept it. Applicant stated counsel did not explain first-degree burglary or his defenses. He testified, "The only thing he said was 15 years or trial." Counsel testified he reviewed discovery with Applicant and would have reviewed the elements of the charge with Applicant.

This Court finds credible counsel's testimony that he met with Applicant, reviewed discovery, and would have reviewed the elements of the charges.[2] This Court likewise finds not credible Applicant's testimony that counsel did not explain the charge or his defenses. Based on the foregoing, Applicant did not prove counsel was deficient. Further, Applicant did not set forth how further meetings, further review of discovery, or further review of the charges and the State's case would have reasonably changed the outcome of trial. Applicant did not prove prejudice. This claim is without merit and relief is denied.

YOA Plea

[2] Applicant himself acknowledged meeting with counsel three times and stated he received discovery.

Applicant next contends counsel was ineffective for not timely conveying the solicitor's initial plea offer of a Youthful Offender Act (YOA) sentence. He avers that if this offer had been timely conveyed, he would have pled guilty. Applicant did not prove this ground.

At the PCR hearing, Applicant stated he initially met with counsel at the first court date, and counsel relayed a YOA plea offer of seven years, suspended to YOA. Applicant stated he accepted the plea, but the solicitor was not available that day, so they had to reschedule. He stated counsel later relayed offers of fifteen years and twelve years, but Applicant refused those offers. Applicant testified counsel told him the YOA offer was gone because there was a different solicitor.

This Court finds Applicant's testimony that the State offered him plea of seven years, suspended to YOA, not credible. This Court finds a YOA sentence could not even apply to Applicant under these circumstances. The YOA Act defines a youthful offender as

> an offender who is:
>
> > (i) under seventeen years of age . . . ;
> >
> > (ii) seventeen but less than twenty-five years of age at the time of conviction for an offense that is **not a violent crime**, as defined in Section 16-1-60, and that is a misdemeanor, a Class D, Class E, or Class F felony, or a felony which provides for a maximum term of imprisonment of fifteen years or less;
> >
> > (iii) under seventeen years of age . . . ;
> >
> > (iv) seventeen but **less than twenty-one years of age at the time of conviction** for burglary in the second degree (Section 16-11-312). If the offender committed burglary in the second degree pursuant to Section 16-11-312(B), the offender must receive and serve a minimum sentence of at least three years, no part of which may be suspended, and the person is not eligible for conditional release until the person has served the three-year minimum sentence;
> >
> > (v) under seventeen years of age . . .; or

> (vi) seventeen but less than twenty-five years of age at the time of conviction for committing criminal sexual conduct with a minor in the third degree . . . .

At the time of these burglaries in November 2017, Applicant was twenty-one years old.[3] Thus, provisions (i), (iii), and (v) do not apply. Likewise, provision (ii) does not apply because First and Second Degree Burglary are both violent crimes under section 16-1-60 of the South Carolina Code. Finally, provision (iv) does not apply because Applicant was twenty-one when he committed these crimes, and twenty-two when he was convicted. This Court finds Applicant's testimony that he was offered a YOA sentence not credible. This Court further finds Applicant did not prove any deficiency by counsel related to plea offers, nor did he prove prejudice. Critically, Applicant testified counsel relayed offers of twelve and fifteen years, which Applicant turned down. This claim is without merit and relief is denied.

Circumstantial Evidence Charge

Applicant next contends counsel was ineffective for not objecting to the court's improper circumstantial evidence charge during the judge's pretrial instructions to the jury. At the PCR hearing, however, Applicant did not offer any testimony or argument on this issue or set forth what objection counsel should have made. Applicant thus did not meet his burden of proving deficiency or prejudice.

Further, this Court finds the trial judge's pretrial instructions were not objectionable. Regarding circumstantial evidence, the trial judge stated,

> Now, in criminal cases, evidence may direct or circumstantial. So, what is direct evidence/ Direct evidence is what somebody saw, heard, did, touched, sensed by smell, something of that nature. Circumstantial evidence is indirect evidence, that it is proof of one or more facts from which you can find another fact. So you are to consider both direct and circumstantial evidence. You are allowed

[3] This Court has before it an unredacted copy of Applicant's records from the South Carolina Department of Corrections, which includes his birthdate.

> to give them both equal weight, but it is for you to decide how much weight to give any evidence.

This Court finds this was a proper statement. Applicant did not set forth what objection counsel should have made to this and thus did not prove deficiency. Likewise, Applicant did not prove prejudice. Critically, Applicant does not take issue with the Court's *jury* charge, and this Court finds the jury charge was proper. Thus, even if the Court's pretrial comment was somehow objectionable, any issue was cured by the proper jury charge. Finally, the evidence in this case included Applicant's confession and police apprehending him in the victim's home—direct evidence of his guilt. This was not a purely circumstantial evidence case, making it not reasonably likely any comment the court made pretrial about circumstantial evidence affected the outcome. This claim is without merit and relief is denied.

Trial strategy[4]

Finally, Applicant contends counsel's decision to rely on a defense that the residence burglarized was not a dwelling was not reasonable in light of South Caroli case law. He contends the trial court's decision not to charge the lesser-included offense should have been clear from a review of facts and applicable case law, and there was no reasonable strategic reason to pursue such a defense. Applicant further avers counsel's decision to argue in closing that the residence was not a dwelling even after being informed of the court's decision not to charge the lesser-included offense served no reasonable strategic purpose and had no chance of success in light of the trial court's decision. This Court finds Applicant did not prove this ground. At trial, counsel argued the home was a "building" rather than a "dwelling" at the time of the November 17 burglary because Victim had been staying with her mother and requested the lesser-included offense as to that charge. The trial court disagreed. (Tr. 312-14).

[4] This section combines allegations (1)(d) and (e).

During closing argument, counsel argued:

> The defense believes that there is a question as to whether the home or the house on November 17, 2017 was a dwelling under the law. Now, you'll get an instruction about a dwelling, what is a dwelling, when you get your jury charges.
>
> I believe you're going to be told that a dwelling is where a person habitually sleeps and that the absence from a dwelling, a temporary absence doesn't necessarily change its nature as a dwelling. The question here is anybody living in that home. Was anyone residing, such that they would be sleeping in the home at the time that this break-in happened?
>
> And again, we'll address the evidence that you've seen on that. The State believes that there was an uninterrupted break where—excuse me, an uninterrupted period where Ms. Singleton was living in that home. And there's no questions that she's the victim in this case, a victim of both break-ins, but the question isn't whether she had property in the house at the time, it was whether it was a dwelling under the law for that second indictment.

(Tr. 369-70).

At the PCR hearing, counsel testified he was familiar with the law and knew it was a long-shot argument. However, he asserted that because the owner stated she had been staying elsewhere, he believed it was a jury question as to whether the home was in fact a dwelling at the time of the second burglary.

This Court finds, under the facts of this case, counsel's strategy was reasonable under prevailing professional norms and not deficient. This Court further finds Applicant has not set forth a different, more valid strategy that would have likely resulted in a different outcome and thus failed to prove deficiency or prejudice. Ultimately, Applicant seems to be conflating a jury charge with a jury argument. Although the trial court determined it would not charge Burglary Second Degree as to the second offense, nothing precluded counsel from arguing to the jury that the State did not meet its burden of proving beyond a reasonable doubt that the home was a

dwelling. In fact, had the jury determined the State did not meet its burden in that regard, it would have resulted in an acquittal on that charge. Although counsel himself acknowledged it was a long-shot argument, it was a reasonable and zealous argument under these facts. Applicant did not prove deficiency or prejudice. This claim is without merit and relief is denied.

CONCLUSION

Based on the foregoing, this Court concludes Applicant has not established any constitutional violations that would entitle him to relief. The application should be and is therefore 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 THIS 23rd day of December, 2024.

J. Derham Cole,
Presiding Judge
Fourteenth Judicial Circuit

Spartanburg, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2021CP0702125

Ben Reed IV		**South Carolina Attorney General Office**	

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: _____

☐ **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

ORDER OF DISMISSAL

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. D. Cole	2053	12/23/2024
Circuit Court Judge	**Judge Code**	**Date**

For Clerk of Court Office Use Only

This judgment was entered on **December 31, 2024**, and a copy mailed first class or placed in the appropriate attorney's box on **December 31, 2024**, to attorneys of record or to parties (when appearing pro se) as follows:

Benn Reed IV #379241 Lieber Correctional Institution 136 Wilborn Ave Ridgeville, SC 29472
Michael H. Lifsey PO Box 548 Chester, SC 29706

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.