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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Williamsburg County
Court of Common Pleas
The Honorable Edward W. Miller, Circuit Court Judge
Appellate Case No. 2023-001504

LAQUINCY M. WILLIAMS,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

T. CRUISE MITCHELL
S.C. Bar No. 105682
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

STATEMENTS OF ISSUES ON CERTIORARI

Petitioner's Statement of Issue on Certiorari

I. Did the PCR Court err in finding Trial Counsel provided effective assistance by failing to object when the State elicited inadmissible character evidence of Petitioner's prior arrest from an unrelated charge in another county that served no legitimate purpose?

II. Did the PCR Court err in finding Trial Counsel provided effective assistance by failing to conduct a reasonable investigation when Counsel did not obtain the log-in sheet from the daycare to corroborate the alibi witnesses' testimony?

III. Did the PCR Court err in finding Trial Counsel provided effective assistance by failing to properly present the co-defendant's potential plea deal during trial when Counsel did not move for the appropriate disclosure of a plea deal and did not adequately confront the co-defendant?

Respondent's Counterstatement of Issue on Certiorari

I. Did the PCR Court correctly find Counsel was not ineffective for failing to object when the State elicited admissible evidence of Petitioner's prior booking from an unrelated charge that was used to prove Petitioner's identity in the crime and where, admissibility of testimony notwithstanding, Petitioner suffered no prejudice from the alleged failure to object?

II. Did the PCR Court correctly find Counsel was not ineffective for failing to conduct a reasonable investigation into Petitioner's alibi defense when Counsel presented the testimony of two alibi witnesses at Petitioner's trial and Petitioner suffered no prejudice from Counsel's alleged failure to obtain the daycare log-in sheet because Petitioner failed to present evidence of the sheet at the PCR hearing?

III. Did the PCR Court correctly find Counsel was not ineffective for failing to present co-defendant's potential plea deal where Petitioner has failed to prove a plea deal between the State and co-defendant existed at the time of trial and where Counsel adequately cross-examined co-defendant regarding any alleged deal in exchange for his testimony?

STATEMENT OF THE CASE

Petitioner Laquincy M. Williams presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. In January 2011, the Williamsburg County Grand Jury jointly indicted LaQuincy Williams ("Petitioner"), and his co-defendants, Toshonda Mickens and James Henry ("Co-Defendant Henry") for murder, armed robbery, burglary, first degree, criminal conspiracy, and possession of a weapon during a violent crime (2011-GS-45-0016). Cesar E. McKnight ("Counsel"), Esquire, represented Applicant. Assistant Solicitors Kimberly Barr, Esquire, and Tyler Brown, Esquire, prosecuted the case. On September 9-13, 2013, Petitioner and his co-defendant, Toshonda Mickens, proceeded to trial before the Honorable W. Jeffrey Young. The jury found Petitioner and Co-Defendant Mickens guilty as indicted on all charges. Judge Young sentenced Petitioner to imprisonment for concurrent terms of life for murder, life for burglary, first, degree, thirty years for armed robbery, five years for possession of a weapon during a violent crime, and five years for criminal conspiracy.

Petitioner filed a timely notice of appeal. Susan B. Hackett, Esquire, of the Office of Appellate Defense, perfected the appeal. After consideration of Applicant's *pro se* brief and review pursuant to Anders v. California, 386 U.S. 738 (1967), the South Carolina Court of Appeals dismissed Applicant's appeal on March 30, 2016. State v. Williams, Op. No. 2016-UP-143 (S.C. Ct. App. filed March 30, 2016). The remittitur was returned to the circuit court on April 20, 2016.

Petitioner filed a post-conviction relief application on January 17, 2017, asserting various allegations of ineffective assistance of counsel. Respondent made its Return and Partial Motion

to Dismiss, dated June 13, 2017, requesting an evidentiary hearing. Petitioner filed an amended PCR application on August 26, 2021.

An evidentiary hearing was convened on October 31, 2022, at the Sumter County Courthouse. Petitioner was present and represented by Jonathan D. Waller, Esquire (PCR Counsel). D. Russell Barlow, II, Esquire, represented Respondent. Petitioner and Cesar E. McKnight, Esquire, testified at the hearing. By order dated August 30, 2023, and filed September 8, 2023, Judge Miller denied Petitioner relief and dismissed the PCR application with prejudice. This appeal follows.

STANDARD OF REVIEW

The post-conviction relief court's findings of fact receive great deference during appellate review and will be upheld if "any evidence of probative value" exists in the record to support the lower court's findings. Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016). Questions of law are reviewed *de novo*, and appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. Id; Smalls v. State, 422 S.C. 174, 180-181, 810 S.E.2d 836, 839 (2018).

ARGUMENT

I. The PCR Court correctly found Counsel was not ineffective for failing to object when the State elicited admissible evidence of Petitioner's prior booking from an unrelated charge that was used to prove Petitioner's identity in the crime and where, admissibility of testimony notwithstanding, Petitioner suffered no prejudice from the alleged failure to object

Petitioner contends the PCR court erred by finding Counsel was not ineffective for failing to object to allegedly inadmissible character evidence. This argument is without merit. The Sixth and Fourteenth Amendments to the United States Constitution guarantee criminal defendants the right to "assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair." Strickland v. Washington, 466 U.S. 668 (1984). Where, as in this case, a PCR Petitioner alleges ineffective assistance of counsel as a ground for relief, the Petitioner must prove that "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 v. Washington, 466 U.S. 668, 686 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland: first, the Petitioner must prove that counsel's performance was deficient. Strickland, 466 U.S. at 686; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures 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). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Second, counsel's deficient performance must have prejudiced Petitioner 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. "A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed." Strickland, 466 U.S. at 670. The Petitioner bears the burden of proving the allegations in his application by a preponderance of the evidence. Butler, 286 S.C. at 442, 334 S.E.2d at 814; Rule 71.1(e), SCRCP.

At Petitioner's trial, the following exchange occurred during the direct examination of Investigator Pamela Wrenn:

Q. Did you record on the arrest warrant a height for Mr. Laquincy Williams?

A. Yes, ma'am.

Q. And where did you get the information about the height?

A. That was from a prior booking if I am not mistaken, with Florence County Sheriff's Department.

Q. Did you look at his DMV records?

A. His DMV records, once- -

Q. And when I say DMV record, I mean his driver's license record.

A. Yes, I did. And we always run a history as well, a criminal history.

Q. On his DMV record, what did it reflect his height as?

A. 5'6.

(App'x p.900, ll. 16–p. 901, ll. 1–6).

Counsel was not deficient for failing to object to this allegedly inadmissible character evidence. First, this testimony was elicited not to demonstrate Petitioner's propensity to commit crimes, but, rather, to prove Petitioner's identity in committing the crime. "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible to show motive, *identity*, the existence of a common scheme or plan, the absence of mistake or accident, or intent." Rule 404(b), SCRE; see also State v. Weaverling, 337 S.C. 460, 467, 523 S.E.2d 787, 791 (Ct. App. 1999) (citing State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923)) ("Generally, South Carolina law precludes evidence of a defendant's prior crimes or other bad acts to prove the defendant's guilt for the crime charged.") (emphasis added).

This evidence was elicited in response to testimony Petitioner elicited during cross-examination of Latisha Bell:

Q. Okay. How tall was the guy that came into the room?

A. I can't give you a description. He wasn't tall, tall.

Q. I mean was he short like me?

A. No, he was a little taller than you.

Q. A little taller than me?

A. Yes.

Q. When you say a little taller I mean like 3 inches or what?

A. What is your height?

Q. I am 5'5 on a good day.

A. I would say probably about 5'7.

Q. Okay.

Q. About 5'6, 5'7.

(App'x. p. 748, ll. 21–25—p. 749, ll. 1–10).

Here, Petitioner was clearly attempting to demonstrate that Ms. Bell, a critical eyewitness for the State, misidentified Petitioner based on the estimated height of the man she witnessed. Ms. Bell testified that the man she witnessed was approximately 5'6 or 5'7. The State, to corroborate Ms. Bell's testimony and refute Petitioner's argument of misidentification, elicited testimony from Investigator Wrenn that Petitioner was, in fact, 5'6. Because this testimony was admissible, Counsel was not deficient for failing to object.

The PCR court correctly found the State was not attempting to introduce the prior booking as character evidence. Petitioner contends the State attempted to elicit this testimony based on the Prosecutor's specific question. The record refutes this. Based on the State's line of questioning immediately following the alleged prior bad act testimony, the State was clearly anticipating Ms. Wrenn to base her answer on Petitioner's DMV records listing his height and not his prior booking. The State quickly diverted the focus of the questions to the DMV records and the prior booking was not mentioned again. See State v. Council, 335 S.C. 1, 515 S.E.2d 508 (1999) (determining law enforcement agent's isolated testimony that he compared defendant's fingerprints with SLED's fingerprint card they had on record was not so prejudicial to defendant as to warrant a mistrial because it was questionable whether jury drew connection between fingerprint card and defendant's prior criminal activity); State v. Robinson, 238 S.C. 140, 119 S.E.2d 671 (1961), overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991) (holding that, even if the testimony created the inference in the jury's mind that the accused had committed another crime, the State never attempted to prove the accused had been convicted of some other crime); State v. Creech, 314 S.C. 76, 81–82, 441 S.E.2d 635, 638

(Ct.App.1993) (holding trial judge did not abuse his discretion in denying defendant's motion for a mistrial when officer testified that he obtained warrants for defendant's arrest and contacted "the Probation Officer").

Furthermore, the testimony regarding Petitioner's prior booking was a mere statement made in passing, which, had Counsel objected, would have drawn undue attention to the otherwise innocuous statement. Additionally, the record reflects the State expected Ms. Wrenn to base her answer on Petitioner's DMV records and not his prior booking in Florence County.

Petitioner has further failed to prove that had Counsel objected to the oblique reference to his prior booking, there is a reasonable probability the outcome of the trial would have been different. The PCR Court correctly noted Petitioner had a week-long trial with several witnesses who testified to Petitioner's presence and involvement in the crimes for which the jury convicted Petitioner. For example, a co-defendant gave lengthy testimony about Petitioner's presence and actions during the robbery. James Gquan Henry (Co-Defendant Henry) testified at trial that he was sixteen years old at the time of the robbery. (App'x. p. 785, l. 13). Co-Defendant Henry testified that Petitioner gave him a gun and Petitioner had a gun on him both times they went to the Victim's house. (App'x. pp. 808, l. 23–809, l. 19). Co-Defendant Henry testified that they entered the Victim's house and bedroom, and the Victim shot Co-Defendant Henry twice, and Petitioner started wrestling with Victim. (App'x. pp. 816, l. 4–818, l. 10). Co-Defendant testified that Petitioner somehow got the Victim's gun from him and started shooting the Victim, and when Co-Defendant Henry put his hands on Petitioner's shoulder Petitioner turned and shot Co-Defendant with the Victim's gun. (App'x. pp. 817, l. 23–819, l. 8). Co-Defendant Henry then testified that he did not think Petitioner intentionally shot him in the chest. (App'x. p. 819, ll. 7–12). Petitioner has failed to prove that had the singular reference to his prior booking not been

made, the outcome of the proceeding would have been different. Because the State never intended to prove Petitioner was convicted of another crime and considering the oblique nature of the reference to his prior booking, Petitioner has failed to prove he was prejudiced. Therefore, the Petition for Writ of Certiorari should be denied.

II. The PCR Court correctly found Counsel was not ineffective for failing to conduct a reasonable investigation into Petitioner's alibi defense when Counsel presented the testimony of two alibi witnesses at Petitioner's trial and Petitioner suffered no prejudice from Counsel's alleged failure to obtain the daycare log-in sheet from the daycare because Petitioner failed to present evidence of the sheet at the PCR hearing.

The PCR Court correctly found that Counsel was not ineffective for failing to investigate Petitioner's alibi defense when Counsel did not obtain the log-in sheet from the daycare. As an initial matter, Petitioner failed to provide to the PCR Court a copy of the purported log-in sheet from the daycare. Petitioner cannot possibly prove deficiency or prejudice by Counsel's alleged failure to investigate the daycare sheet since evidence of its exculpatory value, or even its existence, was not presented at the evidentiary hearing.

Additionally, Counsel thoroughly investigated and presented an alibi defense at trial, including eliciting testimony from Petitioner's family members that Petitioner was dropping off his niece or nephew (depending on which family members testimony). Strickland v. Washington makes clear that defense counsel "has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." 466 U.S. 668, 691 (1984). "A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). "[W]hile the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to interview potential witnesses and

to make an independent investigation of the facts and circumstances of the case." Ard v. Catoe, 372 S.C. 318, 331– 32, 642 S.E.2d 590, 597 (2007) (internal quotation marks omitted) (emphasis omitted). However, this duty is limited to a reasonable investigation. Id. at 331, 642 S.E.2d at 597. Further, to prevail on a claim of ineffective assistance based on failure to investigate, a PCR applicant must ordinarily present some probative evidence. See Jackson v. State, 329 S.C. 345, 353– 54, 495 S.E.2d 768, 772 (1998) (reversing the PCR court's grant of relief where the applicant failed to "present any evidence of what counsel could have discovered or what other defenses he would have requested had counsel more fully prepared for the trial").

Through an alibi, an accused attempts "to show that because he was not at the scene of the crime at the time of its commission, having been at another place at the time, he could not have committed the crime." State v. Robbins, 275 S.C. 373, 375, 271 S.E.2d 319, 320 (1980) (quoting 21 Am. Jur. 2d Criminal Law § 136)). To do so, the accused must show "he was at a place so distant that his participation in the crime was impossible." Id. Furthermore, the alibi must account for the entire time during which these crimes were committed. Id. "Since an alibi derives its potency as a defense from the fact that it involves the physical impossibility of the accused's guilt, a purported alibi which leaves it possible for the accused to be the guilty person is no alibi at all." State v. Glover, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (citing Robbins, 275 S.C. 373, 271 S.E.2d 319).

The PCR Court correctly found Petitioner suffered no prejudice from this allegation. As the PCR Court noted, at trial, Counsel called Applicant's mother, April Williams (April), to the stand to provide testimony on Applicant's alibi defense.[1] (App'x p. 998–1026). April testified

[1] Trial Counsel noticed the State of Applicant's alibi defense on August 30, 2013. At trial, Trial Counsel placed on the record that his alibi was that he was at his mother's house the day the crimes occurred. (App'x. pp. 259, l. 12 – 257, l. 10).

that on November 1st and 2nd, 2007, Applicant was home from 4:00 am until 12:00 pm because he had to take his niece to daycare[2] at 12:00 pm. (App'x. pp. 1001, l. 23–1004, l. 5). April testified that Applicant had to pick up his niece from daycare at 5:30 pm. (App'x. p. 1003, ll. 17 – 18).

Counsel called Applicant's sister, Lakasha Williams (Lakasha), to the stand to also provide testimony on Applicant's alibi defense. (App'x. pp. 1026, l. 22–1042, l. 15). Lakasha testified that on November 1st and 2nd, 2007, Applicant took her son to daycare, and he had to be there no later than 10:00 am. (App'x. p. 1030, ll. 7–19). Contrary to Williams' testimony, Lakasha testified that she was positive that Applicant took her son to daycare around 9:00 or 9:15 am. (App'x. p. 1031, ll. 12 – 21). Then Lakasha testified that she could not remember what time Applicant took her son to daycare but that it had to be before 9:30 or no later than 10:00 am because Ms. Olla Mae Brown would not accept children after 10:00 am. (App'x. p. 1033, ll. 12 – 15). On cross-examination, Lakasha testified that did not see Applicant take her son to daycare because she was already on the way to work, but, she knew Applicant dropped her son off at daycare. (App'x. p. 1041, ll. 5 – 11).

The record clearly reflects Counsel investigated and presented an alibi defense at trial. It is purely speculative that a log-in sheet from the daycare the day of the murder would have held any exculpatory value to Petitioner. Petitioner cites to Martin v. State, 427 S.C. 450, 832 S.E.2d 277 (2019), to support his argument that Counsel can be held ineffective even though the log-in sheet was not introduced at the PCR hearing. This case is distinguishable from the present case. In Martin the applicant failed to present an alibi witness at the PCR hearing; however, the trial

[2] Testimony provided that the daycare was actually a neighbor, Olla Mae Brown, who ran a daycare from her home, and it was right down the street from Applicant's mother's home. (App'x. pp. 1003, l. 15 – 1004, l. 6).

counsel in Martin testified that he was aware of the specific timeline of the absent witness yet failed to introduce it. Id. at 453, 832 S.E.2d at 278–279. Here, Counsel was never examined regarding the log-in sheet, so it is unknown whether Counsel knew of the alleged log-in sheet or whether he had a valid reason for not introducing it if it did exist. Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). This allegation is solely supported by mere speculation. Thus, Petitioner has failed to meet his burden proving deficiency or prejudice as to this allegation.

Accordingly, the Petition for Writ of Certiorari should be denied.

III. The PCR Court correctly found Counsel was not ineffective for failing to present co-defendant's potential plea deal where Petitioner has failed to prove a plea deal between the State and co-defendant existed at the time of trial and where Counsel adequately cross-examined co-defendant regarding any alleged deal in exchange for his testimony.

The PCR court correctly found Counsel was not ineffective in failing present co-defendant's potential plea deal. Petitioner has failed to meet his burden proving a plea deal between the State and Co-Defendant Henry even existed. The record from Petitioner's trial is completely devoid of any evidence a plea deal existed; in fact, the record tends to support the exact opposite—that Co-Defendant Henry had not yet pleaded guilty and there was no deal in exchange for testifying. Petitioner argues that Counsel should have moved for appropriate disclosure of a plea deal. At the beginning of Petitioner's trial, Counsel moved for the State to reveal any plea deals they have made with Co-Defendant Henry:

> Mr. McKnight: Thank you, Your Honor, also at this time, the defense for Mr. Laquincy Williams makes a motion for the state to reveal any plea deals that they have made with any potential witnesses in this case. Specifically, Mr. Henry.
>
> The Court: Ms. Barr?

Ms. Barr: Judge, we have not make any plea deals with Mr. Henry.

(App'x. p. 34, ll. 13–21).

Clearly, Counsel moved for the disclosure of a potential plea deal between the State and Co-Defendant Henry. Thus, Counsel was not deficient in this regard.

Additionally, Co-Defendant Henry testified multiple times, in response to Counsel's cross-examination, that there were no promises made to him in exchange for his testimony. (App'x. p. 847, ll. 2–19; p. 852, ll. 9–12; p. 853, ll. 7–9; p. 858, ll. 21–859, l. 5). Applicant has presented no evidence a plea deal existed besides the following testimony from Counsel at the PCR hearing:

> I think prior to the trial - - I think that came out on - - on cross when I asked him. I mean, I knew he had a deal; I didn't know what the deal was. Normally what happens is, especially in the third in Williamsburg County, if someone is going to plead or someone is going to cooperate, they plead first and then they hold off on sentencing based upon how they do at the - - during the trial during their testimony. So there wasn't so much to quid pro quo if you do this we'll give X, Y, Z. There's not that. Especially not with Solicitor Barr, she wouldn't do that.

(App'x. p. 1300, ll. 12–24).

Counsel was clearly explaining the general practice of how Williamsburg County, and Ms. Barr specifically, typically deal with guilty pleas of a cooperating witness; this was not testimony regarding this case specifically. Additionally, this was testimony from an evidentiary hearing convened years following the trial. More timely evidence of a deal, or lack thereof, is Counsel's own cross-examination of Co-Defendant Henry in which he asked the following:

Q. Isn't it true that you haven't been sentenced yet?

A. Yes, sir.

Q. Isn't it true that you haven't pled guilty yet?

A. Yes, sir.

Q. So you're hoping that if you do what they tell you to do, you will get a light sentence.

A. No, sir.

Q. No? You're not hoping - - so if you come in here and the judge gives you life, you're happy with that?

A. I told them the truth.

(App'x. pp. 858, ll. 18–859, l. 5).

Clearly, based on Counsel's own leading questions, he was aware at the time of trial that Co-Defendant Henry had not been sentenced and had not even pleaded guilty prior to the trial. Petitioner also cites to Counsel's questioning of Co-Defendant Henry regarding a potentional deal that he would not be charged federally if he cooperated with law enforcement to support his argument a deal existed. However, as the Solicitor brought up during re-direct of Co-Defendant Henry, no such deal could have existed because Applicant's co-defendant was a juvenile at the time of the murder and could not be charged federally. (App'x. p. 872, ll. 9–12). Because Applicant has failed to prove a plea deal existed, Counsel cannot be found deficient for failing to present any alleged plea deal. Additionally, as demonstrated in the above exchange, Counsel did attempt to impeach Applicant's co-defendant regarding a promise in exchange for testifying during his cross-examination. Co-Defendant Henry responded no promise had been made in exchange for his testimony. Petitioner has also failed to prove he was prejudiced from any potential plea deal for the same reason, he has failed to prove a plea deal existed between the State and Co-Defendant Henry.

CONCLUSION

For the reasons stated above, this Court should deny certiorari. However, if this Court decides to grant the Petition of Writ of Certiorari, Respondent respectfully requests permission to more fully brief the issues herein.

Respectfully submitted,

ALAN WILSON
Attorney General

D. RUSSELL BARLOW
Senior Assistant Deputy Attorney General

T. CRUISE MITCHELL
Assistant Attorney General

BY: _____
T. Cruise Mitchell
S.C. Bar # 105682

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

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