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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Grace Gilchrest Knie, Circuit Court Judge

2019-CP-23-6803

Joseph Chappell, Appellant,
v.
The State, Respondent.

NOTICE OF APPEAL

Joseph Chappell appeals the Honorable Grace Knie's Order of Dismissal filed November 7, 2023. Counsel received notice of the order March 4, 2025.

This 28th day of February, 2025

s/ Susannah Ross
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STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Joseph Chappell, #179150,)
)
 Applicant,)
 v.)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 THIRTEENTH JUDICIAL CIRCUIT

Case No.: 2019-CP-23-6803

ORDER OF DISMISSAL

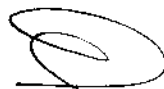
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This matter comes before the Court by way of an application for post-conviction relief filed by Joseph Chappell on November 20, 2019. A motions hearing was scheduled for September 21, 2023, at the Greenville County Courthouse. Applicant and his appointed counsel, Susannah C. Ross, Esq., were present. Senior Assistant Deputy Attorney General Melody J. Brown represented the State. By agreement, the motions hearing was converted to an evidentiary hearing. After consideration of the testimony given at the hearing, and after reviewing and considering the record, arguments presented by counsel, and the controlling case law, this Court finds that Applicant has failed to carry his burden of proof. Consequently, this Court DENIES relief for the specific reasons set out in this order.

General Procedural History

Applicant is presently incarcerated pursuant to orders of commitment of the Greenville County Clerk of Court. A Greenville County grand jury indicted Applicant in May 2017 for carjacking (2017-GS-23-4041). Rodney Wade Richey, Esq., represented Applicant on the charge. A jury trial was held April 11, 2018. The Honorable Roger L. Couch presided. The jury convicted as charged. Judge Couch sentenced Applicant to 15 years imprisonment. Applicant timely filed a notice of appeal.



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Appellate Defender Taylor D. Gilliam of the South Carolina Commission on Indigent Defense, Division of Appellate Defense, perfected the appeal in the form of an *Anders*¹ brief. After the required review, the Court of Appeals dismissed the appeal. *State v. Chappell*, Unpublished Opinion No. 2019-UP-345 (S.C. Ct. App. filed October 9, 2019). The Court of Appeals issued the remittitur on October 25, 2019.

Current Allegations

In his original *pro se* application, Applicant alleged:

- 1) Ineffective assistance of counsel;
 - a) "Evidence Attorney had or knew about but failed to use."
 - i) "Council failed to use Forensic officer's report as evidence During Cross Examination he never asked or question the officer about the report. Were he said he didn't observe victim to have any physical signs of injury and had him point to were he was struck Also he took still photo's of victim."
 - b) "Ineffective Assistance of Council: Discovery violation Brady v. Maryland"
 - i) "Council failed to provide me with all of my Brady motion. I never received pictures of the victim. Council had knowledge this exculpatory evidence if present at trial or before would have been material to the outcome of this case. Thus depriving of a fair trail."

In the amendment filed on September 22, 2022, Applicant, through counsel, raised the following issues:

Fifth, Sixth, Eighth and Fourteenth Amendment violations of the Constitution of the United States & Art. I Sec. 3, 10 & 14 of the South Carolina Constitution due to ineffective assistance of counsel for proceeding with trial when he knew Coneze Bonner, the alleged victim in this case, creating a conflict of interest in his representing the Applicant. (R. p. 79, l. 2)

Due Process violations in that the [State] knowingly presented false

¹ *Anders v. California*, 386 U.S. 738 (1967).

information of injury to the victim's head when officers saw no signs of injury and pictures showed no signs of injury. (R. p. 63).

At the hearing, PCR counsel moved to conform the allegation to the evidence by adding an ineffective assistance of counsel claim regarding counsel's failure to question Coneze Barner about his injury.

Standard of Review: Ineffective Assistance Claims

This Court is guided by the familiar test: To show a violation of the Sixth Amendment, an applicant must show that counsel's representation fell below an objective standard of reasonableness, and but for counsel's error, there is a reasonable probability that the outcome of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 694 (1984); *Simpson v. Moore*, 367 S.C. 587, 595–96, 627 S.E.2d 701, 706 (2006). "A reasonable probability is a probability sufficient to undermine confidence in the outcome" of the trial. *Strickland*, at 694. It is presumed that counsel made all decisions in exercise of reasonable judgment. *Strickland*, at 689. It is the applicant's burden to prove, by a preponderance of the evidence, that he is entitled to relief. Rule 71.1 (e), SCRPC. *See also Speaks v. State*, 377 S.C. 396, 399, 660 S.E.2d 512, 514 (2008) ("the burden of proof is on the applicant to prove the allegations in his application").

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In addition to carefully considering the record and the arguments presented by counsel, this Court has also had the opportunity to consider the testimony presented at the remand hearing and has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. §17-27-80 (2003).

Applicant's trial attorney, Rodney W. Richey, appeared credible when he testified during the hearing. Upon review of the transcript of the jury trial, which was held on April 11, 2018, for the criminal offense of Carjacking, the Application, the Return, and all other pertinent documents,

the Court concludes that Applicant does not meet the required standard articulated in *Strickland*, in which Applicant is required to prove by a preponderance of the evidence that counsel was deficient and that he was prejudiced by any deficiency. Therefore, the Applicant has failed to meet his burden of proof and relief must be denied.

Specifically, in regard to Applicant's allegations regarding questioning and potential evidence not used at trial regarding the injuries sustained by Coneze Barner, this Court finds credible Mr. Richey's testimony that he had investigated the facts and prepared for the defense in this matter. His testimony was also credible that he shared his whole file with Applicant. The trial record alone supports that counsel was prepared for trial, vigorously cross-examined witnesses, and argued on behalf of Applicant. Moreover, Applicant has not shown that potential further cross-examination of the victim, or presentation of other witnesses or evidence concerning victim's injuries, shows either deficient performance or prejudice for several reasons.

First, the victim testified that Applicant "looked at [victim] and he said, you going to give me this car. I'm a beast, exactly what he said...." (Trial Tr., at 63). He continued that Applicant hit him "upside [his] head" and asserted that there was a "knot and gash." (Trial Tr., at 63). Barner testified he was hit again, and Applicant "g[o]t against the door of the car and start[ed] kicking [victim] out the car." (Trial Tr., at 64). While he testified that he was "hopping" because his medical boot and crutches were still in the car, and that he was "bleeding," he also testified that he tried to decline the responding deputy's offer to call EMS. (Trial Tr., at 68). Mr. Richey followed-up with cross-examination concerning the "intensity" of the hit; elicited testimony that victim was a soldier and consider the blow "nothing" compared to injuries received in his military career; and elicited that victim required only a "little stitch or Band-aid thing on it, and that's it." (Trial Tr., at 84-86). In other words, while the victim may have appeared to overstate his injuries, he also

admitted a band aid was sufficient. Mr. Richey also underscored the State's burden of proof and challenged the evidence in closing, arguing that had a significant injury been visible, then the State could have presented witnesses who treated such injury or explained the injury, but the State failed to do so. (Trial Tr., at 138-141).

Second, the "great bodily injury" component of the carjacking statute is an element affecting sentencing and will increase the sentencing maximum from twenty years to thirty years. S.C. Code Ann. § 16-3-1075 (A) and (B)(2). The statute, though, provides that carjacking may be proven when the vehicle is taken "by intimidation" such that injury is not required at all to prove the crime. S.C. Code Ann. § 16-3-1075 (B). Here, there was no allegation of "great bodily injury" and none was found to support a greater sentencing range. At sentencing, the parties agreed that "this particular offense carries not more than twenty years" which falls under (B)(1) in the statute; the sentencing portion of the statute that does not require proof of "great bodily injury." (Trial Tr., at 172). In fact, the parties agreed on that prior to trial as well. (Trial Tr., at 10). In short, this was not a "great bodily injury case" at all.

Third, this Court also finds credible and logical the testimony agreeing that an injury can be sustained without a physical showing of the injury, *i.e.*, not every hit on the head will produce a visible bruise or "knot" immediately, or for that matter, at all. Moreover, as noted above, intimidation will suffice to support the charge of carjacking.

Fourth, Mr. Richey's testimony was credible that the defense was originally going in a different direction per Applicant's instructions, but Mr. Richey, upon investigation, determined that the witness to be relied on was not trustworthy and that he would not call him.² Mr. Richey reasonably pivoted to a defense that there was an arrangement for use of the car, and that the

² Applicant has not challenged counsel's strategic decision on this matter in his PCR action.



exchange was fueled by drug addiction. (See Trial Tr., at 53-54; see also Trial Tr., at 97).

“Because decisions regarding cross-examination are strategic, they usually ‘will not support an ineffective assistance claim.’ ” *United States v. Bernard*, 762 F.3d 467, 472 (5th Cir. 2014) (quoting *Dunham v. Travis*, 313 F.3d 724, 732 (2d Cir. 2002)). Additionally, a “decision whether to call any witnesses on behalf of the defendant, and if so which witnesses to call, is a tactical decision of the sort engaged in by defense attorneys in almost every trial.” *United States v. Nersesian*, 824 F.2d 1294, 1321 (2d Cir. 1987).

Based on the facts and circumstances in this case, this Court finds that Applicant has failed to carry his burden of showing deficient performance. Trial counsel impeached the victim’s testimony regarding injury, and credibility as a whole, in other ways and did not leave the testimony about injury unaddressed. That trial counsel followed a different approach than that which Applicant now favors is not evidence of deficient performance. See *Strickland*, at 689 (“There are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way.”). This Court finds Applicant has not shown that the referenced omitted questions or other “omissions were outside the wide range of professionally competent assistance.” *Id.*, at 690. Even so, had Applicant shown deficient performance, he has still not shown a reasonable probability of a different result, *i.e.*, *Strickland* prejudice. The record shows that trial counsel challenged the victim’s recollection of and description of the injury. And, while Applicant concentrates his argument on a report and picture regarding injuries which were not presented or otherwise used a trial, the presence and extent of physical injury was not at issue. Further, there was no finding of “great bodily injury” used to increase his sentencing exposure – as the prosecution argued, “the Defense has done an excellent job of defeating one element of a completely different crime ... the crime of carjacking



with great bodily injury” however, “[t]hat’s not what we are here for.” (Trial Tr., at 132). And, as noted previously, Applicant’s trial counsel challenged credibility on this point and others, repeatedly referencing common sense and the familiarity of the victim and defendant (suggesting this was not a crime but a deal) and kept the burden of proof squarely on the State. (Trial Tr., at 137-145). Applicant has failed to show a reasonable probability of a different result.

As to his allegation of a due process violation based on the victim’s testimony regarding extent of injury, as shown, the extent of injury was not in any way left unchallenged, but, critically, it was also not material. Nothing shows false evidence was presented, relied upon, or left uncorrected to Applicant’s detriment. Notably, in addition to the victim’s testimony, a responding deputy (Fuller) testified that the victim “had an injury to his head” and that victim “was having trouble ... standing.” (Trial Tr., 89-91). Also notably, the State elicited information from another responding deputy (Flowers) that while EMS was called for the victim, and he was checked but not transported. (Trial Tr., at 102). But critically, the State did not rely upon the evidence of injury to obtain a conviction. (Trial Tr., at 132-135). Consequently, there could be no reliance on false testimony regarding injury in securing a conviction; thus, no due process violation. *See generally Napue v. People of State of Ill.*, 360 U.S. 264, 269 (1959) (“a conviction obtained through use of false evidence” is a due process violation). To the extent Applicant claims counsel failed to provide him a picture of the victim reflecting no injury, that cannot be the *Brady*³ violation he alleges. A *Brady* violation is premised on circumstances where the State does not produce material and favorable evidence in its possession; it does not extend to defense counsel’s actions. *See, e.g., Gibson v. State*, 334 S.C. 515, 526, 514 S.E.2d 320, 325 (1999) (“The overriding theme of the *Brady* cases is the emphasis the Supreme Court has placed on the prosecutor’s responsibility for

³ *Brady v. Maryland*, 373 U.S. 83 (1963).

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fair play.”).

As to the claim of conflict in representation, Applicant has failed to show any divided loyalties simply because his trial counsel knew of the victim. Mr. Richey testified that he had grown up in the same area as the victim, that victim was “4 or 5 years older” than him, and admitted a general knowledge of the victim and victim’s background. However, “to establish a violation of the Sixth Amendment, a defendant who raised no objection at trial must demonstrate that an actual conflict of interest adversely affected his lawyer’s performance.” *Cuyler v. Sullivan*, 446 U.S. 335, 348 (1980). “[U]ntil a defendant shows that his counsel actively represented conflicting interests, he has not established the constitutional predicate for his claim of ineffective assistance.” *Id.*, at 350. Here, Applicant did not raise any concern at trial. Applicant conceded in his PCR hearing testimony that he made no motion at trial based on counsel’s prior general knowledge of the victim, even though the trial testimony reflected at least a general knowledge of the victim’s background. (See Trial Tr., at 75-76). Notably, Applicant had attempted to relieve Mr. Richey at the beginning of trial, but not for his knowledge of the victim. (Trial Tr., at 5-15). In fact, Applicant never raised a potential conflict at any point at trial. Further, there is no indication that counsel held any loyalty, duty or obligation to the victim. In fact, the trial record shows counsel used his knowledge both of the area of the crime and the victim’s background in preparing and presenting the defense. (See Tr. p. 8-9 and 75-76). There is no evidence of divided loyalties. Thus, Petitioner has failed in his burden of proof. *Duncan v. State*, 281 S.C. 435, 439, 315 S.E.2d 809, 811 (1984) (finding no actual conflict of interest existed in the absence of evidence that counsel “owed a duty to a party ... whose interests were adverse to his”).

CONCLUSION

For the above stated reasons, this Court finds that Applicant failed to carry his burden of



proof in showing a constitutional violation that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

IT IS THEREFORE ORDERED:

1. Applicant's application for post-conviction relief is denied and dismissed with prejudice; and,
2. Applicant is remanded to the custody of Respondent for completion of his sentence.

AND IT IS SO ORDERED this 31st day of October, 2023.



GRACE GILCHRIST KNE
Presiding Judge

