NOTICE OF APPEAL FROM A PCR DENIAL BY THE COURT OF COMMON PLEAS

THE STATE OF SOUTH CAROLINA
In Supreme Court of SC

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Grace Gilchrist Knie, Circuit Court Judge

Case #2022-CP-43-00310

The State, Respondent,

v.

Malik Singleton Appellant.

NOTICE OF APPEAL

Malik Singleton, appeals the decision of the Court, in the order dated September 20, 2024, a filed copy of which was retrieved by counsel from the South Carolina Public Index on March 6, 2025, where Mr. Singleton was denied his request for Post-Conviction Relief. Mr. Singleton was represented at the hearing by Timothy L. Griffith, Attorney at Law who files this notice on behalf of the Appellant. The order herein attached and a copy of which is also forwarded to the SCCID Appellate Division.

Dated 3/6/25

Timothy L. Griffith, Esquire
2338 Mount Vernon Dr.
Sumter, SC 29154
Telephone: (803) 499-2012
Attorney for Appellant (relieved)
Will not be representing on appeal

Other Counsel of Record:
T. Cruise Mitchell, Esquire
Assistant Attorney General
South Carolina Attorney General's Office
P.O. Box 11549, Columbia, S.C. 29211

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

Grace Gilchrist Knie
Judge

180 Magnolia Street
Spartanburg, SC 29306
Phone: (864) 596-2285
Fax: (864) 562-4234
gknie@sccourts.org

September 17, 2024
Via USPS

Sumter County Clerk of Court
Attn: Common Pleas Division
215 North Harvin Street
Sumter, SC 29150-4974

Dear Clerk:

Please see the attached Order of Dismissal on Malik Singleton v. State 2022-CP-43-0310. Once you receive this Order and have clocked it in please email me a copy for our records at gkniesc@sccourts.org.

Sincerely,

Ashley B. Searcy
Administrative Assistant to
The Honorable Grace G. Knie
S.C. Circuit Court Judge
7th Judicial Circuit

STATE OF SOUTH CAROLINA COUNTY OF SUMTER	)	IN THE COURT OF COMMON PLEAS FOR THE THIRD JUDICIAL CIRCUIT
Malik Singleton, SCDC #378882, Applicant, v. State of South Carolina, Respondent.	)	Case No. 2022-CP-43-00310 **ORDER OF DISMISSAL**

I. INTRODUCTION

The matter before this Court is an action for post-conviction relief (PCR) commenced by Malik Singleton ("Applicant") on February 25, 2022. On July 24, 2024, a hearing into the matter was convened before the Honorable Grace Gilchrist Knie at the Sumter County Courthouse. Applicant was present and represented by Timothy L. Griffith, Esquire. Assistant Attorney General T. Cruise Mitchell represented the State.

After hearing the testimony at the PCR hearing and upon full review of the record, this Court finds Applicant's allegations regarding ineffective assistance of counsel are without merit. For the reasons discussed below, this Court denies relief and dismisses this action with prejudice.

II. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Sumter County Clerk of Court. During its October 2017 term, the Sumter County Grand Jury indicted Applicant for attempted murder (2017-GS-43-1075, count 1) and possession of a weapon during the commission of a violent crime (2017-GS-43-1075, count

2). Applicant was represented by Jason Bridges, esquire. The case was prosecuted by John P. Meadors, esquire.

On January 14–17, 2019, Applicant proceeded to trial before the Honorable George M. McFadden, and a jury. The jury found Applicant guilty of the lesser included offense of assault and battery of a high and aggravated nature, and possession of a weapon during the commission of a violent crime. On January 17, 2019, Judge McFadden sentenced Applicant to twenty (20) years imprisonment suspended to fifteen (15) years active time for assault and battery of a *high* and aggravated nature, and a consecutive five (5) year sentence for the weapons charge.

Applicant filed a timely notice of appeal. The appeal was perfected by Appellate Defender Adam Ruffin of the South Carolina Commission on Indigent Defense, Appellate Division. The South Carolina Court of Appeals affirmed Applicant's convictions and sentence in an unpublished opinion. *State v. Malik J. Singleton*, Unpub. Op. No. 2021-UP-437 (Ct. App. filed December 8, 2021). Applicant filed a petition for rehearing which was denied on January 26, 2022.

On February 25, 2022, Applicant filed a petition for writ of certiorari in the South Carolina Supreme Cout. On September 8, 2022, The South Carolina Supreme Court denied Applicant's petition by written order. The remittitur was issued on September 8, 2022.

III. STATEMENT OF FACTS

In December of 2016, Travis Dow (Victim) recovered money from an auto accident he was in. (Trial Tr. p.107). On December 13, 2016, Victim witnessed Applicant in his backyard with a gun. (Trial Tr. p.108). Victim believed Applicant wished to rob him of his settlement money. (Trial Tr. p.109–110). The following day, Victim was watching TV at his sister's house when Applicant broke in the back door. (Trial Tr. p.111). Victim ran to the front door in an attempt to escape. As Victim was escaping out of the front door, Applicant shot through the screen door and grazed

Victim. (Trial Tr. pp.114–115). While speaking with law enforcement at the hospital, Victim identified Applicant as the person who shot him. (Trial Tr. p.162). Applicant was subsequently apprehended by law enforcement. (Trial Tr. p.163).

IV. CURRENT APPLICATION

Applicant commenced this PCR application on February 25, 2022. In his application Applicant alleged he was entitled to relief based on the following grounds:

1. Ineffective Assistance of Counsel
    a. Counsel failed to "object to the trial counsel jury instruction of attempt murder that 'the State must prove the defendant with the intent to kill, attempted to kill another person with malice aforethought.'"
    b. Counsel failed to "object to the testimony of text messages, was a Brady violation as such, there was no way to authenticate this information."
    c. Counsel failed to "object to sentence that was imposed by court when the facts show the defendant should not have accused a felony sentence but misdemeanor charge."
2. Prosecutorial Misconduct
    a. "Prosecutor comments about uncharged robbery denied a fair trial as the state never charged Applicant with this offense."
    b. "Prosecutor comments during closing about 'Good Police Work' constitutes improper vouching."

At the evidentiary hearing, Applicant raised and only went forward on the following allegations:

1. Ineffective Assistance of Counsel
    a. Counsel failed to review discovery and the State's evidence with Applicant.
    b. Counsel would not allow Applicant to testify at trial.

V. INEFFECTIVE ASSISTANCE OF COUNSEL, GENERALLY

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

The reviewing court applies the two-part test outlined in *Strickland v. Washington* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction. 466 U.S. 668, 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Id.* at 687–88; *accord. Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

The applicant has the burden of establishing both deficiency and prejudice in order to be entitled to relief. *Hughes v. State*, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001); Rule 71.1(e), SCRCP. To prove deficient performance, the applicant must establish that, in light of all the circumstances, the acts or omissions complained of "were outside the wide range of competence" demanded of attorneys in criminal cases. *Strickland*, 466 U.S. at 688. To prove prejudice, the applicant must establish "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." *Id.* Significantly, "the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." *Id.* at 696.

VI. FINDINGS OF FACT & CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After hearing the testimony presented and considering the legal arguments by counsel, as well as the record in this action incorporated by way of the State's return, this Court finds Applicant's claims to be without merit. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

Failed to Adequately Consult and Review Discovery with Applicant

Applicant contends Counsel was ineffective for failing to adequately consult with him. This Court finds this allegation is without merit.

Applicant suggests a failure to adequately meet with him prior to trial. Additionally, Applicant contends Counsel failed to review discovery with him. This Court finds Counsel's credible testimony refutes this allegation. There is no established "minimum number of meetings between counsel and client prior to trial necessary to prepare an attorney to provide effective assistance of counsel." *United States v. Olson*, 846 F.2d 1103, 1108 (7th Cir.1988) (there is no constitutional minimum number of meetings between attorney and client and observes that an experienced attorney may get more out of a single meeting than a neophyte); *Moody v. Polk*, 408 F.3d 141, 148 (4th Cir. 2005); *Campbell v. Polk*, 447 F.3d 270, 279, n.2 (4th Cir. 2006) ("we cannot conclude that the fact that Campbell's counsel only met with him five times before trial made them ineffective."). "'[B]revity of consultation time between a defendant and his counsel, alone,' 'cannot support a claim of ineffective assistance of counsel.'" *Davis v. State*, 44 So. 3d 1118, 1130 (Ala. Crim. App. 2009) (quoting *Murray v. Maggio*, 736 F.2d 279, 282 (5th Cir. 1984)); *White v. Godinez*, 301 F.3d 796, 800 (7th Cir. 2002) ("A brief consultation does not by

itself establish that counsel's performance was inadequate."); *Chavez v. Pulley*, 623 F. Supp. 672, 685 (E.D. Cal. 1985) ("brevity of consultation time between a defendant and his counsel alone cannot support a claim of ineffective assistance of counsel," especially where the defendant "fails to allege what purpose further consultation with his attorney would have served and fails to demonstrate how further consultation with his attorney would have produced a different result"). Applicant testified Counsel failed to review discovery with him and only met with him once prior to trial. Counsel testified he met with Applicant at least twice with one of those meetings being very lengthy. Counsel testified the primary evidence against Applicant was the hours long interrogation of Applicant. This Court finds Counsel's testimony credible. Counsel filed a motion to suppress the statement and argued against its admissibility at a lengthy *Jackson v. Denno* hearing. (Trial Tr. pp.28–81). This Court finds Counsel adequately reviewed discovery with Applicant and was prepared for trial. Thus, this Court finds Counsel was not deficient in his consultations with Applicant.

Furthermore, Applicant has failed to specify what, if anything, could have been achieved had Counsel spent more time with him in consultation regarding his case. *See Smith v. State*, 404 S.C. 493, 500–01, 745 S.E.2d 378, 382 (Ct. App. 2012) (noting that an applicant must present evidence to show how additional time spent in consultation regarding discovery would have resulted in a different outcome; mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief). Thus, Applicant has failed to meet his burden establishing prejudice as to this allegation.

Accordingly, this allegation is DENIED.

Counsel Failed to Allow Applicant to Testify

Applicant contends Counsel was ineffective for failing to allow him to testify. This Court finds this allegation is without merit.

At the evidentiary hearing, Applicant explained he wanted to testify at trial, but Counsel would not allow him. Applicant admitted he was advised of his right to testify. Counsel testified they were both in agreement it would not be a good idea for Applicant to testify. Counsel testified it was Applicant's decision whether to testify or not. The record from Applicant's trial corroborates Counsel's testimony:

> The Court:...Mr. Bridges, have you and your attorney - - your client talked about this, sir?
>
> Mr. Bridges: Yes, Your Honor, both today and in previous days and in some weeks before this trial. We have discussed it at length.
>
> The Court: All right. Mr. Bridges, are there any questions that you would like to ask your client about this decision?
>
> Mr. Bridges: No, I'm comfortable that we have discussed this issue thoroughly.

(Trial Tr. p.261).

"A defendant's decision to testify or not must be made with knowledge of the consequences of either choice". *Brown v. State*, 340 S.C. 590, 533 S.E.2d 308 (2000). "On-the-record waiver of constitutional or statutory right is but one method of determining whether defendant knowingly and intelligently waived that right". *Brown v. State*, 317 S.C. 270, 453 S.E.2d 251 (1994). Here, the trial court engaged in a thorough colloquy with Applicant explaining his right to testify or not and the consequences of either choice. (Trial Tr. pp.260–262). Applicant affirmed, under oath, he understood his rights and had previously discussed those rights with Counsel. (R. p.260). Upon further questioning, Applicant again affirmed he was freely, voluntarily, and knowingly waiving his right to testify. (Trial Tr. p.262). This Court finds, based on the record and Counsel's credible

testimony, Applicant was properly advised of right to testify and voluntarily chose not to.

Accordingly, this allegation is DENIED.

Failure to Object[1]

Applicant makes various allegations that Counsel was ineffective for failing to object.

Attempted Murder Jury Instruction

First, Applicant contends Counsel was ineffective for failing to object to the trial court's jury instruction on attempted murder. Specifically, Applicant is alleging Counsel should have objected to the trial court's instruction that in order to prove attempted murder, "the State must prove the defendant with the intent to kill, attempted to kill another person with malice aforethought." (Trial Tr. p.311). This Court finds this allegation is without merit.

"In reviewing jury charges for error, this Court must consider the circuit court's jury charge as a whole in light of the evidence and issues presented at trial." *State v. Simmons*, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009). The South Carolina Supreme Court has established that specific intent to kill is an element of attempted murder. *State v. King*, 422 S.C. 47, 810 S.E.2d 18 (2017). "A finding of malice in an attempted murder proceeding can be express or implied, and the jury may look at a defendant's actions and imply or infer from those actions that the defendant had the specific intent to kill required for attempted murder." *State v. Taylor*, 434 S.C. 365, 862 S.E.2d 924 (Ct. App. 2021).

Here, with respect to attempted murder, the trial court instructed the jury that:

> In order to prove this crime, the State must prove the defendant with the intent to kill, attempted to kill another person with malice aforethought. Malice is hatred, ill will, or hostility towards another person. It is the intentional doing of a wrongful act without just cause or excuse and with an intent to injure another and indicates a

[1] No testimony was presented at the evidentiary hearing regarding these allegations.

> wick or depraved spirit, intent on doing wrong. Malic aforethought does not require that malice exists for a particular time before the act is committed. Malice must exist in the mind of the defendant at the time of the act and cannot develop after the fact occurred. Therefore, there must be a combination of the previous evil intent and the act.
>
> Attempted murder can be committed on when the defendant's act or acts are accompanied by expressed malice or malice in fact. Expressed malice is the deliberate and specific intent of the defendant to unlawfully kill another with hatred, ill will, or hostility, without just cause or excuse. It is the performance of an act or acts which tend, but fail, to kill a human being.
>
> Specific intent means that the defendant consciously intended the completion of the killing of another but failed to do so. If you, the jury, find the State has proven beyond a reasonable doubt that it was the defendant's specific intent to kill another with expressed malice, then you must find the defendant guilty. If you find the State has failed to prove that the defendant is guilty of attempted murder, you must then decide whether the State has proved that the defendant is guilty of the lesser-included offense of assault and battery of a high and aggravated nature.

(Trial Tr. pp. 311 – 312).

The trial court correctly instructed the jury that specific intent to kill is an element of attempted murder. Additionally, the trial court correctly instructed the jury regarding malice. Therefore, Counsel was not deficient for failing to object to the jury instruction regarding attempted murder.

Furthermore, Applicant was acquitted of attempted murder, so he has failed to prove he was prejudiced by any alleged error. Accordingly, this allegation is DENIED.

Text Messages

Next, Applicant alleges Counsel was ineffective for "failing to object to the testimony of the text messages was a Brady violation, as such, there was no way to authenticate this information." This Court finds this allegation is without merit. Counsel did object to the admission of testimony concerning the text messages based on lack of authentication. (Trial Tr. p. 146). Thus, Counsel was not deficient.

Additionally, Applicant has failed to offer any evidence or testimony that the prosecution failed to disclose the text messages that were admitted at his trial. Therefore, he has failed to meet his burden showing a *Brady* violation occurred.

Accordingly, this allegation is DENIED.

Sentence

Applicant alleges Counsel was ineffective for failing to object to the sentence imposed "when the facts show the defendant should not have accused a felony sentence but misdemeanor charge." Respondent submits this allegation is without merit. A person convicted of assault and battery of a high aggravated nature must be imprisoned for not more than twenty years. S.C. Code Ann. § 16-3-600. A person convicted of possession of a weapon during the commission of a violent crime "must be imprisoned five years, in addition to the punishment provided for the principal crime." S.C. Code Ann. § 16-23-490. "The court may impose this mandatory five-year sentence to run consecutively or concurrently." *Id.* Assault and battery of a high and aggravated nature is classified as a Class C felony. S.C. Code Ann. § 16-1-90. Applicant was sentenced to twenty (20) years imprisonment suspended to fifteen (15) years active time, and a five (5) year consecutive sentence for possession of a weapon during the commission of a violent crime. Applicant was convicted of a felony offense at trial and was sentenced within the statutory range for both offenses. Counsel had no meritorious reason to object to Applicant's sentence; thus, Counsel was not ineffective for failing to object.

Accordingly, this allegation DENIED.

Allegations of Prosecutorial Misconduct

Applicant alleges prosecutorial misconduct in his PCR application. This Court finds these allegations to be without merit. Applicant did not present any testimony or evidence regarding

allegations of prosecutorial misconduct at the evidentiary hearing. Because of the lack of evidence presented, this Court is not entirely sure which alleged comments he is referring to in his PCR application. Thus, Applicant has failed to meet his burden establishing any claim of prosecutorial misconduct.

However, to the extent Applicant is referring to comments Solicitor Meadors made during closing argument in which he states:

> It occurred during the commission of a robbery, burglary, kidnapping, or – and this is an attempted armed robbery – wasn't charged with it, doesn't have to be charged with it. They were there to rob him. So it occurred during a robbery.

(Trial Tr. p.271).

Counsel objected to this comment but was overruled by the trial court. (Trial Tr. p. 272). Applicant further alleges "prosecutor comments during closing about 'Good Police Work' constitutes improper vouching." During closing argument, while Solicitor was discussing the testimony of Lieutenant Ragin, he made this comment:

> But the import of that - - and I think that's good police work. I think its great police work.

(Trial Tr. p. 291).

This comment was objected to by counsel and overruled by the trial court. (Trial Tr. p.291). Counsel properly objected to both allegedly improper comments; thus, these issues should have been raised on direct appeal. These issues are improper for post-conviction relief because they could have been raised on direct appeal and are procedurally barred by S.C. Code Ann. §17-27-20(b). Post-conviction relief is not a substitute for a direct appeal. *Simmons v. State*, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. *Ashley v. State*, 260 S.C. 436, 196 S.E.2d 501 (1973).

Applicant could have raised this issue at trial or on appeal. His failure to do so has waived this allegation as a ground for relief.

This Court finds Applicant has failed to state a cognizable claim for which relief can be granted under the Post-Conviction Relief Act. Additionally, Applicant has failed to present sufficient evidence or testimony regarding any allegation of prosecutorial misconduct; thus, Applicant has failed to meet his burden regarding these claims.

Accordingly, these allegations are DENIED.

[Signature Page Follows]

VII. CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. This Court finds Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's representation. Therefore, this Court denies relief on all allegations and dismisses this PCR action with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to 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). Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 17th day of September, 2024.

THE HONORABLE GRACE GILCHRIST KNIE
Presiding Judge
Third Judicial Circuit

Spartanburg, South Carolina