

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case No. 2021-CP-08-1168

Drake Campbell,

Appellant,

v.

State of South Carolina,

Respondent

NOTICE OF APPEAL

Drake Campbell hereby appeals the denial and dismissal of his application for post conviction relief in this case. An evidentiary hearing in the matter was convened before the Honorable Michael G. Nettles. Following the hearing, Judge Nettles issued a written order denying and dismissing the application with prejudice filed June 5, 2025. The Clerk of Court typically emails a filed copy of the order but same was not received. Undersigned counsel discovered the filed order online on or about June 10, 2025.

Dated: July 6, 2025

s/ Denise Grainger. Swope
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STATE OF SOUTH CAROLINA)
 COUNTY OF BERKELEY)
 Drake Campbell, #377575,)
 Applicant,)
 v.)
 State of South Carolina,)
 Respondent.)

COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT

Case No.: 2021-CP-08-01168

ORDER OF DISMISSAL

LEAH GUERRY DUPREE
 CLERK OF COURT
 BERKELEY COUNTY, SC



2025 JUN -5 AM 11:05

FILED

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Drake Campbell (Applicant) on June 6, 2021. Respondent made its return requesting an evidentiary hearing. Respondent also moved to dismiss a claim related to counsel’s failure to move for a severance on the basis the transcript showed counsel did, in fact, move for a severance. On September 9-10, 2024, an evidentiary hearing convened before the Honorable Michael G. Nettles.¹ Applicant was present and represented by Denise Swope, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. At the hearing, the Court heard testimony from Applicant trial counsel Grant B. Smaldone, Esquire; and Assistant Solicitor Bryan Alfaro. Following a thorough review of the records before this Court and the testimony presented at the hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

¹ This matter was previously set for hearings and continued on November 2, 2022, August 21, 2023, and October 20, 2023, at the request of Applicant’s counsel; and on March 11, 2024 at Respondent’s request.

This hearing began September 9, 2014, and this Court held the record open at Respondent’s request to procure the testimony of the solicitor. The record was reopened September 10, 2024.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving an aggregate twenty-year sentence. In April 2017, the Berkeley County Grand Jury indicted Applicant for murder (2017-GS-08-785), attempted murder (-787), two counts of kidnapping (-788, -789), two counts of armed robbery (-786, 787), first-degree burglary (-784), and possession of a weapon during the commission of a violent crime (-790).

On August 27-31, 2018, Applicant and three of his co-defendants proceeded to a jury trial before the Honorable Deadra J. Jeferson. Grant B. Smaldone, Esquire, represented Applicant, and Assistant Solicitors Bryan Alfaro and Wilson McNeely prosecuted the case. The jury acquitted Applicant of murder, attempted murder, and first-degree burglary, but convicted him as indicted on the remaining charges.² Judge Jefferson sentenced him to concurrent terms of twenty years for each kidnapping and armed robbery charge, and five years for the weapon charge.

Applicant filed a timely notice of appeal, which was perfected by Appellate Defender Kathrine H. Hudgins through the filing of an Anders³ brief raising the issue of whether the Court erred in denying the motion to sever. The South Carolina Court of Appeals dismissed pursuant to Anders. The remittitur was sent May 20, 2021.

SUMMARY OF EVIDENCE PRESENTED AT TRIAL

At trial, Krystal Snipe testified she and her boyfriend Kadeem Johnson were returning home around 2:00 a.m.; as they were getting out the car, five masked-men approached armed with

² Co-defendant Jacob Mouzon was convicted as indicted of all charges, and co-defendant Sherrod Palmer was acquitted of all charges. Co-defendant Kenneth Campbell, like Applicant, was acquitted of murder, attempted murder, and first-degree burglary; but convicted of two counts of kidnapping and armed robbery, and one count of possession of a weapon during a violent crime.

³ Anders v. California, 386 U.S. 738 (1967).

guns and forced Snipe and Johnson inside their home. (Tr. 242, 244). She stated three of the men went inside while two remained outside. Once inside, Snipe and Johnson were forced at gunpoint to their bedroom, where their hands were taped. Snipe stated one of the men stayed in the bedroom holding two guns on them while the other two men took items—including a red Hello Kitty bag—from their home. (Tr. 247, 250-53). Snipe testified one of the men removed his mask, and the men began “arguing about they saw our faces, they saw our face. And at that point, he shot Kadeem and he fell in front of me. And then he shot me, and he ran out the door.” (Tr. 282). The men left in the victims’ white Crown Victoria and gray Crown Victoria; after they left, Snipe called 911. (Tr. 202-03, 292). She later identified co-defendant Mouzon as the shooter. (Tr. 284).

Deputy Corinthian Green was dispatched to the shooting. On her way, she received a BOLO for a white Crown Victoria. As she heard the BOLO, a white Crown Victoria and a truck passed her “going around that curve probably about 80 miles per hour. (Tr. 357, 359-60). She turned around to pursue the vehicles; however, the Crown Victoria stopped in the road. As Deputy Green approached, she saw “a black male in the middle of the highway” and surmised he came from the car. (Tr. 362-63). Deputy Green testified the man ran into the woods. She observed a red bandana from the ground near the car. (Tr. 372).

Law enforcement established a perimeter around the abandoned vehicle and began searching. Deputy Timothy Ham observed a black hoody and an AK-47 rifle on Yellow Jacket Road—a forestry road directly through the woods from where the Crown Victoria was abandoned. (Tr. 388, 390-93).

Brittany Bordeaux testified she saw three men walking in the road near Eccles Church and “stopped them because they were in an unusual area for that time of morning.” (Tr. 490-93). She allowed them to use her phone and overheard one of the men asking for a ride. (Tr. 493-94).

Bordeaux stated the men didn't know where they were, and she provided directions to the nearest highway. (Tr. 494). After learning about the shooting, Bordeaux notified police about her encounter. (Tr. 495-96, 499-500).

Kenny Hooffa testified he saw three men walking down a dirt road about two miles from Eccles Church. (Tr. 553-54). He was in the area a short time later and saw the three men "going through the front yard of the church, and they took off running into the woods behind the church." (Tr. 554). Hoffa contacted police; he later identified Mouzon from a lineup. (Tr. 556, 558-59).

Deputy Ham responded to Eccles Church and found a red Hello Kitty bag in the wooded area by the church. (Tr. 397-400). Bloodhound Tracker Richard Hunton had his dog track the area where the men ran into the woods; he subsequently located and apprehended Applicant and Mouzon—who both ran from him as he approached. Bloodhound Tracker Jamar Bennett located Kenneth Campbell in a different area lying under brush on a dirt road. (Tr. 613-14).

Law enforcement recovered Darius Hamilton's fingerprint on tape found in the gray Crown Victoria. (Tr. 974-75). They determined the four cartridges recovered from the bedroom were fired by the same weapon. (Tr. 993-94). A DNA analyst testified Applicant was a major contributor to a mixture of at least three people recovered from the red bandana, and Mouzon was a major contributor to a mixture of DNA on the black hoody. (Tr. 1062).

Co-Defendant Darius Hamilton testified about the events surrounding the shooting and implicated Applicant, Kenneth Campbell, Mouzon, and Palmer. He testified they all met near a two-story building in a wooded area, and Kenneth gave Applicant, Mouzon, Palmer, and Hamilton pistols while Kenneth carried a rifle. (Tr. 732-34). Hamilton testified they approached a trailer in the wooded area and waited two to three hours. (Tr. 735). He stated a car pulled up, and a man and a woman got out. Kenneth and Mouzon ran toward them, and Applicant, Palmer, and Hamilton

walked up to them. (Tr. 740). Hamilton testified he, Kenneth, Mouzon went inside, while Applicant remained outside and Palmer stood in the doorway. (Tr. 742). Hamilton taped their hands, Mouzon held them at gunpoint, and Kenneth searched the house “looking for the weed.” (Tr. 743-44).

CURRENT APPLICATION

On June 8, 2021, Applicant timely filed this PCR application alleging counsel was ineffective for:

- a. failing to call witness;
- b. Failing to request a severance; and
- c. Failing to advise Applicant he could testify after waiving his right to testify following the surprise testimony of a co-defendant.

Respondent filed a return and moved for summary judgment on allegation (b) on the on the basis counsel *did* move to sever the trial. Thereafter, Applicant served on Respondent an amended application alleging counsel was ineffective for failing to object:

- (1) to the trial court’s failure to give a cautionary instruction before testimony began, and
- (2) to the trial court’s brief cautionary instruction, which did not cure the prejudice resulting from a joint trial.

At the hearing, Applicant waived his allegation that counsel was ineffective for failing to call witnesses. He likewise waived his allegation that counsel was ineffective for failing to advise him he could testify after waiving his right to testify following the surprise testimony of a co-defendant. Applicant proceeded on the remaining allegations of his initial and amended application.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Berkeley County Clerk of Court records of the underlying convictions; Applicant's records from the South Carolina Department of Corrections; the trial transcript, the records of Applicant's direct appeal; and the records of this PCR application. This Court has further had the opportunity to observe the witnesses presented at the PCR hearing, closely pass upon their credibility, and weigh their testimony accordingly.⁴ After a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). In evaluating claims of ineffective assistance of counsel, courts apply the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, an applicant must prove counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment," and an applicant must overcome this presumption to receive relief. Id.; Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, a PCR applicant must prove the deficiency prejudiced him such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been

⁴ This Court will reference PCR testimony where relevant below.

different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Failed to request severance

Applicant contends counsel was ineffective for failing to request a severance. Respondent moved for summary judgment on the basis counsel did, in fact, move for a severance. At the PCR hearing, Applicant amended this allegation to assert counsel was ineffective for not requesting a severance when the co-defendant testified. This Court finds Applicant did not prove counsel was ineffective in this regard.

“Criminal defendants who are jointly tried are not entitled to separate trials as a matter of right.” Hughes v. State, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001). “A defendant who alleges he was improperly tried jointly must show prejudice before this Court will reverse his conviction.” Id. at 558-59, 552 S.E.2d at 317. “The general rule allowing joint trials applies with equal force when a defendant's severance motion is based upon the likelihood he and a co-defendant will present mutually antagonistic defenses, i.e., *accuse one another of committing the crime.*” Id. at 559, 552 S.E.2d at 317 (emphasis added). “The rule allowing joint trials is not impugned simply because the codefendants may present evidence accusing each other of the crime.” State v. Walker, 366 S.C. 643, 657, 623 S.E.2d 122, 129 (Ct. App. 2005) “A severance should be granted only when there is a serious risk that a joint trial would compromise a specific trial right of a codefendant or prevent the jury from making a reliable judgment about a codefendant's guilt.” State v. Halcomb, 382 S.C. 432, 440, 676 S.E.2d 149, 153 (Ct. App. 2009). “A proper cautionary instruction may help protect the individual rights of each defendant and ensure that no prejudice results from a joint trial.” Hughes, 346 S.C. at 559, 552 S.E.2d at 317.

Initially, counsel *did* move for a severance prior to trial, arguing there could be antagonistic defenses that would violate due process. The trial court denied this motion. (Tr. 61-64, 68-69). At

the PCR hearing, Applicant merely testified, “I believe more details would have aided severance.” Applicant did not set forth with any specificity *what* details he believed would have caused the trial court to sever the trial. Applicant likewise did not set forth what additional argument counsel should have made related to the motion to sever. Thus, this Court finds Applicant did not prove deficiency or prejudice in this regard.

This Court further finds Applicant did not prove counsel was ineffective for not moving for a severance when co-defendant Jacob Mouzon testified. Initially, this testimony came at the conclusion of trial—after the State had rested its case, and well after the time to move to sever had passed. Thus, counsel was not deficient in this regard. Further, it is not reasonably probable the trial court would have granted a motion to sever at the end of trial when it had been previously denied. Critically, Applicant had the opportunity to cross-examine Mouzon, and Applicant has not set forth a specific trial right that was compromised by Mouzon’s testimony. Applicant thus has not met his burden of proving deficiency or prejudice, and this claim is denied. See, e.g., State v. Walker, 366 S.C. 643, 658, 623 S.E.2d 122, 129 (Ct. App. 2005) (finding no abuse of discretion in trial court’s denial of motion to sever when co-defendants blamed each other for murder); id. (“These antagonistic defenses do not constitute the requisite prejudice.”).

Cautionary Instruction

Applicant asserts counsel was ineffective for failing to object to the trial court’s failure to give a cautionary instruction before testimony began. He likewise contends counsel was ineffective for failing to object to trial court’s cautionary instruction, which he avers was brief and did not cure the prejudice from a joint trial. Applicant did not prove this ground.

In State v. Dennis, 337 S.C. 275, 523 S.E.2d 173 (1999), a joint trial, the trial judge gave the following preliminary statement to the jury:

Now, as you may have heard during the jury selection process, there are two Defendants in this case charged in separate indictments. You must consider each charge separately, and you must decide separately whether each individual Defendant is guilty or not guilty of each charge alleged by the indictment. It is your duty to give such consideration to each individual Defendant on each separate charge alleged in the indictment. You must therefore consider separately the evidence and the law for each individual Defendant for each charge and write your verdict accordingly.

Id. at 281 n.2, 523 S.E.2d at 175 n.2. During its charge, the trial court charged:

As you are aware, there are two Defendants in this case, and each Defendant is charged with one count of murder. *Whatever verdict you find does not have to be the same as to all Defendants. You take each Defendant and consider the evidence as to that Defendant alone, and write your verdict accordingly, in conformity with the evidence in the case and the instructions which I have given to you. Where more than one person is charged with a crime, you may convict one and acquit the other if the evidence warrants it, or you may acquit both or you may convict both.* It will depend upon your view of the testimony and the evidence which you alone can act upon.

Id. (emphasis added). On appeal, the Court analyzed whether the trial court abused its discretion in denying the defendant's motion to sever. In finding the trial court did not err, the Court noted:

The trial judge . . . must act cautiously in allowing a joint trial. The judge must carefully consider problems that may arise from a joint trial, such as redacted statements, and must assure protection of each defendant's constitutional right to confront witnesses against him. *A proper cautionary instruction may help protect the individual rights of each defendant and ensure that no prejudice results from a joint trial.*

Id. at 281-82, 523 S.E.2d at 176 (internal citations omitted) (emphasis added).

In State v. Halcomb, 382 S.C. 432, 442, 676 S.E.2d 149, 154 (Ct. App. 2009), the Court approved the following cautionary instruction for a joint trial:

I will talk with you a little bit further about the fact that these are two individuals charge[d] separately. And you must consider that

separately and render your determinations separately with regard to these cases.... *Now, you must consider each charge separately and you must decide separately whether each individual defendant is guilty or not guilty of the charges alleged in the indictment against that particular individual. It's your duty to give such consideration to each individual defendant on those separate charges alleged in those separate indictments. And you must therefore consider separately the evidence and the law for each individual defendant for each of the charges and write your verdict accordingly.* Please do not forget that at any point during the proceeding.

(emphasis added).

In his application, Applicant relied on Dennis to support this claim. At the PCR hearing, he handed up Halcomb as an example of what should have been charged. Initially, the issue in Dennis and Halcomb was whether the trial court erred in denying the motion to sever—not whether the trial court’s cautionary instruction was adequate. Dennis and Halcomb do not *mandate* a cautionary instruction be given, nor do they prescribe specific language that must be provided for a cautionary instruction to be sufficient. Applicant’s reliance on these cases is thus misplaced.

Further—and critically—*the instruction here is similar to the instructions in Dennis and Halcomb.* Here, the judge gave the following cautionary instruction:

Each indictment charges a separate and distinct offense. ***You must decide each indictment separately on the evidence and the law applicable to it uninfluenced by your decision as to any other indictment.*** The defendant may be convicted or acquitted on any or all of the offenses charged, and you will be asked to write a separate verdict of guilty or not guilty for each indictment.

There are also four defendants in this case, each of whom is charged with murder, attempted murder, burglary first, kidnapping, armed robbery, and possession of a weapon during the commission of a violent crime. ***The case of each defendant and the evidence and the law concerning that defendant should be considered separately and individually.***

Your verdict does not have to be the same for all defendants. The fact that you may find one defendant guilty or not guilty should not

control your verdict as to the other defendants. Where more than one person is charged with a crime, *if the evidence warrants it, you may convict one and acquit the other, or you may—or you may acquit all or you may convict all.*

It will depend upon your view of the testimony and evidence. *You must take each defendant and consider the evidence as to that defendant and my instructions to you on the law.* You will then write a separate verdict of guilty or not guilty for each defendant.

(Tr. 1295-96). Like Dennis and Halcomb, the Court here charged the jury that (1) each charge must be considered separately, (2) each defendant must be considered separately, (3) the evidence against each defendant should be considered separately, and (4) the verdicts did not need to be the same for all defendants. Nothing in Dennis or Halcomb indicates this instruction was inadequate, and Applicant has not pointed to any caselaw that indicates the foregoing language was insufficient. Because Applicant has not pointed to any caselaw at the time of this trial that mandated specific language for a cautionary instruction or otherwise provided the instruction here was inadequate, Applicant did not meet his burden of proof in this regard.

Likewise, Applicant has not pointed to caselaw at the time of Applicant's trial that *required* a cautionary instruction to be given *prior to* testimony. Because the standard of effectiveness under Strickland does not require attorneys to advocate for changes in the law, and because Applicant has not pointed to any law that indicates this instruction a cautionary instruction must be provided at the *start* of a joint trial, he did not meet his burden of proving deficiency related to counsel's failure to request a cautionary instruction *prior to* trial.

Finally, the jury here gave different verdicts for each defendant—showing the jury in fact understood it must consider each charge, each defendant, and the evidence against each defendant separately. (Tr. 1310-17). See Dennis, 337 S.C. at 283, 523 S.E.2d at 176 (“Jurors obviously were able to follow those instructions, as they found appellant guilty and his brother not guilty.”).

Applicant thus cannot show a reasonable probability the outcome would have been different had counsel requested a pretrial instruction or objected to the adequacy of the instruction provided during the jury charge. Thus, this claim is denied.

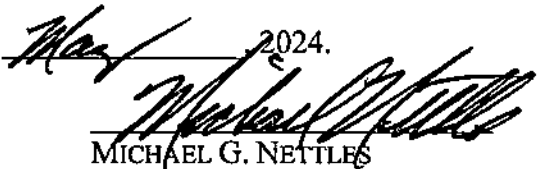
CONCLUSION

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

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant shall be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 8 day of May, 2024.


MICHAEL G. NETTLES
Presiding Judge
Ninth Judicial Circuit

Comtee, South Carolina



ALAN WILSON
ATTORNEY GENERAL

May 29, 2025

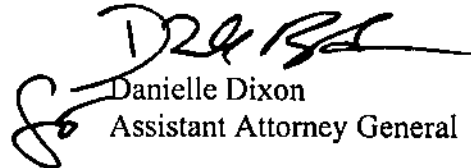
The Honorable Leah Guerry Dupree
Berkeley County Clerk of Court
Post Office Box 219
Moncks Corner, South Carolina 29461-0219

Re: Drake Campbell, #377575 v. State of South Carolina
Case No. 2021-CP-08-01168

Dear Ms. Dupree:

Enclosed please find the original Order of Dismissal signed by the Honorable Michael G. Nettles, in the above-captioned case, for filing in your office. In addition, please forward a time stamped copy back to our office for our file.

Sincerely,


Danielle Dixon
Assistant Attorney General

DD/vh

cc: Denise G. Swope, Esquire