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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The South Carolina Supreme Court

Appeal from Abbeville County
Abbeville County Court of Common Pleas
Hon. Judge J. Derham Cole, Circuit Court Judge, Presiding

2022-CP-01-0080

Charles Tillman.....Petitioner,

Versus

State of South Carolina .....Respondent.

NOTICE OF APPEAL

Charles Tillman APPEALS the order entered in the above titled Post-Conviction Relief matter, which was signed on June 4, 2025, clocked with the Abbeville County Clerk of Court on June 12, 2025, and is attached to this Notice of Appeal. The Petitioner received written notice of the entry of the Order and Judgment in this matter on June 19, 2025.

s/Scarlet B. Moore

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July 20, 2025.
Greenville, S.C.

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ABBEVILLE	)	FOR THE EIGHTH JUDICIAL CIRCUIT
Charles TILLMAN, SCDC #236688,	)	
	)	
Applicant,	)	
v.	)	**ORDER OF DISMISSAL**
	)	
The STATE of South Carolina,	)	Civil Action No. 2022-CP-01-00030
	)	
Respondent.	)	
	)	

INTRODUCTION

The matter before this Court on application for post-conviction relief (PCR) commenced by Charles Tillman ("Applicant") on March 28, 2022. A hearing on the merits was held at the Laurens County Courthouse on August 22, 2024. Applicant was present and represented by Scarlet B. Moore, Esquire. Assistant Attorney General T. Cruise Mitchell represented the State. Testimony was received from Applicant and trial counsel E. Charles Grose, Jr., Esquire.

After a full review of the record, this Court finds Applicant's allegations regarding ineffective assistance of counsel are without merit, denies relief based upon the allegations, and dismisses the application with prejudice for the following reasons.

PROCEDURAL HISTORY

Applicant is presently confined within the South Carolina Department of Corrections. He was indicted at the October 2017 term of the Abbeville County Grand Jury for Murder (2017-GS-01-442), Possession of a Weapon During the Commission of a Violent Crime (2017-GS-01-443), and Obstruction of Justice (2017-GS-01-444).[1] He was represented at trial by E. Charles Grose, Jr., Esq. Assistant Eighth Circuit Solicitors Yates Brown and Micah Black prosecuted the case.

[1] The obstruction of justice charge was dropped prior to Applicant's trial.

Applicant proceeded to trial before Circuit Judge Frank R. Addy, Jr., and a jury on January 22, 2028, was found guilty of Murder and the weapon charge, and sentenced to life imprisonment without the possibility of parole on the Murder conviction.

Applicant filed a direct appeal, raising the following issues:

1. Did the trial court err by not expressly applying the "substantial circumstantial evidence" standard of review to Applicant's motion for a directed verdict?
2. Did the trial court err in Applicant's directed verdict motion?
3. Did the trial court err in denying Applicant's motion to exclude photographs of the victim's body?
4. Did the trial court err in denying Applicant's motion for a mistrial after the State illegitimate "criminal profiling" evidence?
5. Did the trial court err in denying Applicant's request to charge based on *State v. Edwards*, 298 S.C. 272, 379 S.E.2d 888 (1989)?
6. Should the court of appeals grant Applicant a new trial based on the cumulative error doctrine?

The court of appeals affirmed his convictions and sentence. *State v. Tillman*, 433 S.C. 58, 856 S.E.2d 168 (Ct. App. 2021). Applicant's petition for a writ of certiorari was denied, and the remittitur was sent on March 16, 2022.

CURRENT APPLICATION

In his original application for post-conviction relief, Applicant alleges he is being detained unlawfully for the following reasons:

1. "Witnesses have not been call [*sic*] in my behalf."
2. "Not been sentence [*sic*] correctly by Judge"
    a. "16/3/10 Carry Max of 10 years"
    b.

On May 22, 2022, Applicant amended his application to include the following allegations of ineffective assistance of counsel:

a. "Whether trial counsel was not effective to challenge if the 911 phone call qualifies under the business record exception?"
b. "Was trial counsel ineffective for not allowing the trial court determine Applicant was not 'in-custody' for Miranda purposes on the basis of police officer's subjective and undisclosed conclusion that they did not consider Applicant a 'suspect?'"
c. "That trial counsel was ineffective for not challenging the nature and the setting in which Applicant's in-custody interrogation when he was not in-custody."
d. "Trial counsel was not effective for not challenging the chain of custody to the three (3) video

statements and one (1) audio statement."

i. "No chain of custody to Items collected and analysis done by S.L.E.D."

e. "That trial counsel was ineffective for not objecting to Dr. Brett Woodard as to his opinion on time of death (11:00 a.m.)"

f. "Trial counsel was not effective when he failed to sequester the witnesses."

g. "Was trial counsel failure to challenge the charged indictment for 'possession of a weapon during the commission of a violent crime.'"

On August 9, 2024, Applicant filed a second amended application alleging the following additional claims of ineffective assistance of counsel:

1. "Gross failure of defendant's trial lawyer to investigate the State's forensic evidence, including the medical examiner's (Coroner's) time-of-death opinion, deprived Applicant of due process and equal protection of law and a possible alibi defense."
2. "Applicant further contends that his trial lawyer was constitutionally deficient in failing to hire an independent pathologist to challenge the coroner's…conclusion about the time of death, because this case centered around forensice evidence. See Elmore v. Ozmint, 661 F.3d 783 (4th cir 2011)."
3. "Applicant further contends that trial counsel was ineffective when Counsel failed to bring in a blood splatter expert for Applicant at trial because there was some questions about the pattern of the bloodstains at the alleged Crime scene. See State v. Myers, 301 S.C. 251 391 S.E.2d 557 (1990).

Before this Court are the Abbeville County Clerk of Court Records regarding the Applicant's case; the Applicant's records from the South Carolina Department of Corrections; the record on appeal, including the trial transcript; and the current amended application for relief.

INEFFECTIVE ASSISTANCE OF COUNSEL, GENERALLY

In a PCR action, Applicant bears the burden of proving the allegations in his application by a preponderance of the evidence. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985); Rule 71.1(e), SCRCP. Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant 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*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 687; *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. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." *Yarborough*, 540 U.S. at 6; *see also Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable.").

Second, Applicant must show that counsel's deficient performance prejudiced him 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 (quoting *Strickland*, 466 U.S. at 694). "This does not require a showing that counsel's actions 'more likely than not altered the outcome,' but the difference between *Strickland*'s prejudice standard and a more-probable-than-not standard is slight and matters 'only in the rarest case.'" *Harrington*, 562 U.S. at 111-12 (quoting *Strickland*, 466 U.S. at 697). "The likelihood of a different result must be substantial, not just conceivable." *Id.* at 112.

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. 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. *Id.* at 696–97.

FINDINGS OF FACT & CONCLUSIONS OF LAW

This Court has reviewed the testimony and evidence presented at the PCR hearing, observed the witnesses, passed upon their credibility, weighed the testimony. After deliberate consideration of the record, the Court finds each allegation in support of the application 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.

Failure to Investigate Time of Death/Call an Independent Pathologist to Challenge Coroner's Time of Death

Applicant alleges Counsel was ineffective for failing to investigate the pathologist's time of death estimation. Specifically, Applicant alleges Counsel should have called an independent pathologist to challenge the pathologist's time of death. This Court finds this allegation to be without merit.

During Applicant's trial, Dr. Brett Woodard testified that the victim's time of death was between 11:00 p.m. on November 7, 2016, and 11:00 a.m. on the November 8, 2016. (Trial Tr. pp. 301–302).

At the evidentiary hearing, Applicant testified Counsel should have retained an independent expert to challenge Dr. Woodard's estimated time of death. However, Counsel testified that he saw no reason to seek a second opinion, as Dr. Woodard's estimated time range encompassed periods during which defense witnesses testified the victim was still alive. This overlap supported Applicant's alibi. This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in his case." *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing *Strickland*). "[W]hen Counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." *Smith v. State*, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010). Counsel explained he saw no reason to request a second opinion regarding time of death, because the wide range opined by Dr. Woodard overlapped with Applicant's alibi. This Court finds this is a valid reason for not requesting an independent expert to challenge the time of death. Therefore, this Court finds Counsel was not deficient.

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)). Our courts have "repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial." *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998). Here, Applicant has failed to present testimony from any expert who would have offered a different opinion regarding time of death. As such, this allegation is supported by nothing more than speculation. Applicant has failed to meet his burden establishing prejudice in this regard. Given the lack of expert testimony to challenge Dr. Woodard's time of death and the fact that Counsel's decision not to seek a second opinion was based on a reasonable strategic evaluation.

Applicant has failed to establish Counsel was ineffective or that Applicant was prejudiced by Counsel's assistance in this regard and therefore relief based upon this allegation is denied.

Failure to Call Blood Splatter Expert

Applicant alleges Counsel was ineffective for failing to retain a blood splatter expert. Applicant claims Counsel should have retained a blood splatter expert but provides no substantive explanation beyond stating that "there were some questions about the pattern of the blood." Counsel testified he did not recall Applicant informing him he wanted a blood splatter expert, nor did he see any reason to retain one. Applicant has failed to explain how a blood splatter expert would have assisted his defense; thus, he has not met his burden establishing Counsel was deficient.

Additionally, our courts have "repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial." *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998). Applicant did not present testimony from a blood splatter expert at the evidentiary hearing to demonstrate he was prejudiced by Counsel's alleged failure to retain such an expert. Thus, Applicant has failed to prove he was prejudiced from the witness' failure to testify at trial.

Applicant has failed to establish Counsel was ineffective or that Applicant was prejudiced by Counsel's assistance in this regard and therefore relief based upon this allegation is denied.

Failure to Challenge 911 Call

Applicant alleges Counsel was ineffective for failing to challenge the 911 call under the business record exception. This Court finds this this allegation is without merit. As an initial matter, Counsel did object to the admission of 911 call under the business record exception prior to trial. (Trial Tr. p. 84). The trial court ruled that the 911 call would only be admissible if the State called Applicant's mother to testify about what was said on the call. (Trial Tr. pp. 114–116). Given that Counsel properly objected to the 911 call's admission under the business record exception, this Court finds Counsel was not deficient.

Due to Counsel's objection, the State was required to call Applicant's mother to testify about the 911 call, thereby avoiding a potential Confrontation Clause violation.[2] As a result, the 911 call was properly admitted into evidence, and Applicant was not prejudiced by an alleged deficiency in Counsel's objection.

Applicant has failed to establish Counsel was ineffective or that Applicant was prejudiced by Counsel's assistance in this regard and therefore relief based upon this allegation is denied.

Failure to Challenge Applicant's Statement to Law Enforcement

Applicant alleges Counsel was ineffective for failing to challenge the voluntariness of Applicant's statements made to law enforcement. This Court finds this allegation is without merit. At the evidentiary hearing, Applicant testified he gave four or five statements to law enforcement in this matter. He explained that he voluntarily answered law enforcement's questions and never admitted to killing the victim. Applicant testified he did not recall if Counsel moved to exclude the statements. Counsel testified he did not request a *Jackson v. Denno*[3] hearing. Counsel explained that Applicant made four statements in total—three video statements and one audio and was advised pursuant to Miranda prior to making the statements,

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[2] Additionally, Counsel noted that he was able to elicit testimony from Applicant's mother that the victim was alive before Applicant left for work which further benefited Applicant's defense.
[3] 378 U.S. 368 (1964).

even though he was not in custody and was allowed to go home afterward. Counsel noted Applicant maintained his innocence in each of those statements.

At trial, Jeffrey Abbeville County Sheriff's Deputy Jeffrey Hines testified as to the voluntariness of Applicant's statements. Hines testified that, prior to making his first and second statements, Applicant voluntarily agreed to talk to law enforcement, had not yet been placed under arrest, and signed a written waiver of Miranda rights. (Trial Tr. pp. 257–260). Hines further testified that Applicant was again provided Miranda advise prior to providing his third statement to law enforcement. (Trial T. p. 316).

This Court finds Applicant has failed to demonstrate his statements to law enforcement were not voluntary. Applicant admitted that he voluntarily made the statements after being read his Miranda rights. Counsel credibly explained a *Jackson v. Denno* would have been futile, as Applicant was provided Miranda warnings prior to each of his statement and was not in custody at the time. This Court finds this a valid reason for not requesting a *Jackson v. Denno* hearing prior to trial and Counsel was not deficient.

Applicant presented no evidence or testimony indicating that any of his statements were made involuntarily. To the contrary, He admitted that he voluntarily provided the statements to law enforcement which was corroborated by Hines.

Applicant has failed to establish Counsel was ineffective or that Applicant was prejudiced by Counsel's assistance in this regard and therefore relief based upon this allegation is denied.

Failure to Sequester Witnesses

Applicant alleges Counsel was ineffective for failing to request the witnesses be sequestered. This Court finds this allegation is without merit. At the evidentiary hearing, Counsel testified he did not move to sequester the witnesses, because he wanted the defense witnesses in the courtroom. This Court finds this a valid reason for not requesting the witnesses be sequestered. Thus, Counsel was not deficient for failing to request sequestration of the witnesses.

Furthermore, Applicant has offered no evidence or testimony demonstrating how Counsel's alleged failure to sequester witnesses was prejudicial or affected the outcome of the trial. Applicant presented the testimony of three witnesses. Because the witnesses were not sequestered, each of the defense witnesses

had the opportunity to listen to the full testimony presented at trial. If anything, this arrangement benefited Applicant's defense rather than prejudiced it. Therefore, Applicant has failed to prove he was prejudiced by Counsel's failure to move to sequester the witnesses.

Applicant has failed to establish Counsel was ineffective or that Applicant was prejudiced by Counsel's assistance in this regard and therefore relief based upon this allegation is denied.

Ineffective for Stipulating Cause of Death was a Homicide

Applicant alleges Counsel was ineffective for stipulating the cause of death of victim was a homicide. This Court finds this allegation is without merit. At the evidentiary hearing, Applicant claimed Counsel did not discuss stipulating to homicide as the cause of death with him. Counsel testified that the evidence clearly ruled out suicide as the cause of death and that stipulating to homicide helped limit the State's ability to introduce evidence disproving suicide. Counsel clarified the defense theory was to argue Applicant did not commit the homicide, not that the death was a suicide, thus nothing was conceded by the stipulation.

The trial record directly undermines Applicant's assertion that Counsel never discussed the stipulation to homicide with him. During trial, when the court inquired whether the defense intended to stipulate to homicide as the cause of death, Counsel responded, "I'd have to talk with Mr. Tillman, but probably." (Trial Tr. pp. 75–76). In response, the trial judge ordered a recess to allow Counsel the opportunity to confer with Applicant regarding the stipulation. (Trial Tr. p. 76). This exchange in the record indicates that Counsel was given time to discuss the matter with Applicant before any stipulation was entered. This Court finds the record supports a reasonable inference that such a discussion did in fact occur. As such, Applicant has failed to meet his burden demonstrating that Counsel failed to consult with him regarding the stipulation.

Additionally, Counsel credibly testified that stipulating to homicide as the cause of death did not undermine the defense strategy and, in fact, served a legitimate strategic purpose. This stipulation allowed the defense to prevent the State from presenting potentially prejudicial evidence aimed at disproving suicide. This Court finds this a valid reason for stipulating to homicide as the cause of death. "[W]hen

Counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." *Smith v. State*, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010). Therefore, this Court finds Counsel was not ineffective for stipulating to homicide as the cause of death.

Applicant has failed to establish Counsel was ineffective or that Applicant was prejudiced by Counsel's assistance in this regard and therefore relief based upon this allegation is denied.

Failure to Review Discovery

Although not plead in his application, Applicant testified at the evidentiary hearing that Counsel did not provide him with discovery and failed to review it with him. Counsel testified he discussed the discovery with Applicant. This Court finds Counsel's testimony in this regard credible and Applicant's testimony not credible. Therefore, this Court finds Counsel was not deficient in reviewing discovery with Applicant.

Furthermore, Applicant has failed to demonstrate how additional review of the discovery would have affected the outcome at trial. *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).

Applicant has failed to establish Counsel was ineffective or that Applicant was prejudiced by Counsel's assistance in this regard and therefore relief based upon this allegation is denied.

Failure to Call Alibi Witnesses

Applicant alleges Counsel was ineffective for failing to call alibi witnesses at trial. Applicant testified there were various alibi witnesses he wished to have testify at his trial. Counsel testified that while he did not specifically recall the names provided by Applicant, but he and Applicant discussed a potential alibi defense and decided against it.

Applicant has failed to present affidavits, testimony, or any other evidence showing what any potential alibi witness would have said, let alone how their testimony would have affected the outcome of the trial. Our courts have "repeatedly held a PCR applicant must produce the testimony of a favorable

witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial." *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

Applicant has failed to establish Counsel was ineffective or that Applicant was prejudiced by Counsel's assistance in this regard and therefore relief based upon this allegation is denied.

Failure to Discuss Right to Testify

Although not plead in his application, Applicant testified that Counsel never discussed his right to testify and never advised Applicant to take the stand. Counsel testified he discussed with Applicant whether he should testify. Counsel explained that he was able to present portions of Applicant's statements to law enforcement during trial, which allowed him to convey Applicant's version of events without requiring Applicant to testify.

This Court finds Counsel's reasoning for advising Applicant not to testify to be valid. Counsel successfully introduced aspects of Applicant's account through other evidence, thereby avoiding the potential risks of cross-examination. This approach was a reasonable strategic alternative, particularly given Counsel's assessment the Applicant would not have performed well as a witness. Moreover, the trial record corroborates Counsel's testimony that he discussed the right to testify with Applicant and, ultimately, Applicant made the decision not to testify. (Trial Tr. pp. 552–553).

Applicant has failed to establish Counsel was ineffective or that Applicant was prejudiced by Counsel's assistance in this regard and therefore relief based upon this allegation is denied.

CONCLUSION

Based upon the foregoing, this Court finds and concludes Applicant has not established any constitutional violation or deprivation that would entitle him to post-conviction relief. This Court finds Applicant has failed to establish that Counsel was deficient in any manner in his representation of the Applicant, nor has Applicant established that he was prejudiced in any way by Counsel's performance.

Applicant's **APPLICATION** for post-conviction relief should be and **IS** therefore **DENIED** and the application **DISMISSED** with prejudice. Applicant shall be remanded to custody for service of the remainder of the sentence imposed.

Applicant is notified that he 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.

AND IT IS SO ORDERED this 4th day of June, 2025.

J. DERHAM COLE, Presiding Judge
The Eighth Judicial Circuit Court

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2025 JUN 12 P 1:25
SHANDAL BOGGS
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ABBEVILLE COUNTY CLERK OF COURT