

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)

Jose R. Reyes,)
S.C.D.C. No. 370793,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT

Case No.: 2021-CP-39-0245

ORDER OF DISMISSAL

Clerk of Court Pickens County, SC
SEP 19 12:25 PM 2024

This matter comes before the Court by way of an application for post-conviction relief filed by the applicant, Jose Reyes, on March, 2021. Respondent made its return on May 26, 2021. Reyes filed an amended application on May 8, 2024, through counsel Sarah M. Henry, Esq. The Court convened an evidentiary hearing into the matter on May 13, 2024, at the Greenville County Courthouse in Greenville, South Carolina. Reyes was present at the hearing and represented by Ms. Henry, and Joshua A. Edwards, Esq., of the South Carolina Attorney General’s Office, represented Respondent. An interpreter was present to translate for Reyes.

Reyes did not testify. The sole witness was Reyes’s trial counsel, Richard Warder, Esq. The Court had before it Reyes’s records from the South Carolina Department of Corrections, a copy of the trial transcript, the records of the Pickens County Clerk of Court regarding the subject convictions, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Reyes is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Pickens County Clerk of Court. Reyes was indicted at the March 2015 term of the Pickens County Grand Jury for first-degree criminal sexual conduct with a minor (2013-

GS-39-003217).¹ Richard Warder represented Reyes. Brandi Hinton, Esq., prosecuted the case. Reyes proceeded to jury trial before the Honorable Perry H. Gravely, Circuit Court Judge, on December 12, 2016. The State alleged Reyes performed oral sex and digitally penetrated the nine-year-old victim. The child contracted genital herpes, which the States theorized was spread by Reyes, who also tested positive for HSV-type 1. The victim testified at trial, as did expert witnesses who offered medical and behavioral evidence.

Reyes was convicted as charged and sentenced to 28 years' incarceration. Reyes appealed. Through appellate counsel Kathrine H. Huggins, Esq., Reyes raised one issue; that the trial court erred by finding the minor victim competent to testify in the presence of the jury. His convictions were affirmed in an unpublished opinion by the court of appeals. State v. Reyes, Op. No. 2019-UP-214 (S.C. Ct. App. filed June 12, 2019) (per curiam). The supreme court granted Reyes's petition for writ of certiorari and affirmed in a published opinion. State v. Reyes, 432 S.C. 394, 853 S.E.2d 334 (2020). The remittitur was issued on January 5, 2021.

Present Application

At the evidentiary hearing, Reyes pursued only the three claims of ineffective assistance of counsel identified in his amended application:

1. "Applicant alleges that trial counsel failed to object to the admission of inadmissible hearsay that improperly bolstered child's testimony, allowed child's counselor, Victoria Tate, to vouch for the credibility of the child, and the these admissions were not harmless and prejudiced the applicant."
2. "Trial counsel failed to object to the testimony of 'child abuse pediatrics' expert Dr. Mary Fran Crosswell which improperly vouched for the credibility of the child, and that these statements were not harmless and prejudiced the applicant."
3. "Applicant alleges that trial counsel failed to adequately cross examine expert witnesses Shauna Galloway Williams, Victoria Tate, and Mary Fran Crosswell

¹ As noted in the brief of Respondent filed in Reyes' direct appeal, it is unclear why the indictment number does not match the grand jury term.

regarding bias, the reliability and sources of testimony, among other issues, and that these failures were not harmless and prejudiced the applicant.”

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony and exhibits presented at the evidentiary hearing, observed the witnesses and passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based on the evidence presented.

Applicable law: ineffective assistance of counsel.

In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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 686; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “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.”). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel's deficient performance must have prejudiced Applicant 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. “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 prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury.” United States v. Basham, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting Elmore v. Ozmint, 661 F.3d 783, 858 (4th Cir. 2011)).

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.

1. Failure to object to hearsay/ vouching by Victoria Tate.

Reyes alleges trial counsel provided ineffective assistance by failing to object to testimony by Victoria Tate. Tate was a licensed professional counselor employed at the Julie Valentine Center in Greenville. The Valentine Center provides counseling services to sex abuse victims. Tate was qualified as an expert in child abuse counseling. Tate counseled the victim in this case, and gave "time and place" corroboration testimony at trial. See Rule 801(d)(1)(D), SCRE (providing statement is not hearsay if victim testifies and is subject to cross-examination at trial and statement is "consistent with the declarant's testimony in a criminal sexual conduct case or attempted criminal sexual conduct case where the declarant is the alleged victim and the statement is limited to the time and place of the incident"). Tate testified the victim "made a disclosure of abuse" and stated she was sexually abused "at Megan's house." Tate further testified that the victim "appears embarrassed. She appears ashamed. She blames herself for what happened. She's very anxious. She, at times, is aggressive. She also wants to avoid talking about things that have happened to her." (Dec. 12, 2016 Tr.p.83). Defense counsel, on cross-examination, asked whether a child could be ashamed and embarrassed due to telling a lie, and Tate responded that it was possible.

The testimony regarding victim's disclosure of the time and place of abuse was not hearsay. See Rule 801(d)(1)(D), SCRE. Tate's subsequent testimony regarding victim's behavior was permissible behavioral evidence. See State v. Alexander, 303 S.C. 377, 381, 401

S.E.2d 146, 149 (1991) (explaining testimony of mental trauma is “relevant to prove the elements of criminal sexual conduct, including the lack of consent. Evidence of behavioral and personality changes tends to establish or make more or less probable that the offense occurred.”). Regarding bolstering, Tate did not offer an opinion on the victim’s veracity, and thus did not impermissibly bolster her testimony. See State v. Chavis, 412 S.C. 101, 109, 771 S.E.2d 336, 340 (2015) (explaining “it is improper for a witness to testify as to his or her opinion about the credibility of a child victim in a sexual abuse matter”). Reyes further alleges this testimony should have been excluded under Rule 403, SCRE, in that its probative value was substantially outweighed by the danger of unfair prejudice. The court finds this objection would not have been successful because the testimony had high probative value to show the circumstances the victim’s disclosure. Counsel did not provide ineffective assistance by choosing not to object to this testimony.

The Court notes Tate was primarily a fact witness who testified to her personal observations of the victim. Only on cross-examination did Tate give any opinion testimony, which was favorable to Reyes. Tate testified that children can be ashamed and embarrassed due to telling lies. Regardless, the Court notes it is not impermissible for a fact witness to also testify as an expert. State v. Makins, 433 S.C. 494, 504, 860 S.E.2d 666, 672 (2021). The Court further notes the brevity of Tate’s testimony. The Court finds there is not a reasonable probability of a different outcome had counsel objected to Tate’s testimony on the basis of bolstering. For these reasons, this Court finds Applicant has failed to show deficiency or prejudice regarding counsel’s failure to object to Tate’s testimony, and accordingly his request for relief on this allegation is **DENIED**.

2. Failure to object to vouching testimony by Dr. Crosswell.

Applicant alleges counsel provided ineffective assistance by failing to object to the testimony of Dr. Mary Fran Crosswell on the grounds of hearsay and bolstering. Dr. Crosswell is a medical doctor and treated victim at the Julie Vallentine Center in September of 2013. She was qualified as an expert in child abuse pediatrics. (Dec. 12, 2016 Tr.p.86–88). Dr. Crosswell explained she treated victim in her capacity as a medical doctor and performed a “medical examination” of victim. She testified victim “described being touched in her vaginal area by both a hand and a penis” underneath her clothes. Dr. Crosswell further testified about victim’s positive test for herpes, and that this diagnosis was “concerning” to her.

The Court finds this testimony was not objectionable. The victim’s statements about the sexual abuse were made for the purpose of medical diagnosis or treatment, and thus were not hearsay. See Rule 803(4), SCRE (providing “[s]tatements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment” are admissible). Likewise, the herpes lab test was done in order to diagnose the victim’s symptoms. Dr. Crosswell relied on this test in her diagnosis of victim. See Rule 703, SCRE (“The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing.”). Defense counsel objected to Dr. Crosswell’s testimony regarding the test results at trial. (Dec. 12, 2016 Tr.p.94–95). The evidence was admitted over his objection, with the Court citing Creed v. City of Columbia, 310 S.C. 342, 426 S.E.2d 785 (1993).

This Court finds defense counsel provided effective assistance in this regard. Counsel objected at trial, but the trial court correctly held the testimony was not hearsay. Further, counsel

effectively cross-examined Dr. Croswell to show the State could not prove causation between Reyes's positive test for herpes and the victim's. Reyes has not shown deficiency or prejudice.

Nor was this testimony impermissible bolstering. Dr. Croswell's statement that it was "concerning" to her that victim tested positive for genital herpes was not a comment on the victim's veracity. Rather, it was a reasonable factual deduction relevant to her medical diagnosis. Further, the Court does not believe Reyes has established prejudice in that there is no reasonable probability of a different result based on counsel's decision not to object to this comment. Accordingly, Applicant's request for relief on this allegation is **DENIED**.

3. Failure to adequately cross-examine State's expert witnesses.

Applicant alleges counsel provided ineffective assistance by failing to adequately cross-examine the State's expert witnesses. Reyes poses numerous questions counsel could have asked of the State's witnesses, particularly Dr. Shauna Galloway-Williams. In particular, Reyes alleges counsel should have asked questions to contest Galloway-Williams's testimony about the prevalence of false accusations in CSC cases, and the fact that several cases where Galloway-Williams testified have been overturned on appeal. Reyes alleged counsel should have interviewed Galloway-Williams and Dr. Croswell prior to trial. Finally, Reyes alleges counsel did not sufficiently elicit evidence of bias based on the witnesses' association with the Julie Vallentine Center.

The Court finds Reyes has not established deficiency or prejudice. There is an almost infinite amount of questions that could conceivably be used to impeach witnesses. Counsel is entitled to great deference as to which questions he chooses to ask of a witness for impeachment purposes. As defense counsel testified, there are valid strategic reasons to be succinct in cross-examination, such as the ability to focus the jury on testimony counsel believes to be most

important. Counsel further testified he did not believe it would be beneficial to interview the witnesses ahead of time, and doing so could have alerted the witnesses to defense theories and potential cross-examination topics. Finally, the Court notes counsel did effectively cross-examine Galloway-Williams about her association with the Julie Vallentine Center and the phenomenon of false reports of abuse. (Dec. 13, 2016 Tr.p. 24–26). Giving counsel the great deference owed pursuant to Strickland, this Court finds Reyes has failed to establish deficiency. Further, this Court does not believe the questions Reyes suggests counsel should have asked would have been reasonably likely to have had any effect on the outcome of trial. Applicant's request for relief on this allegation is **DENIED**.

[Conclusion and signature on following page]

III. CONCLUSION

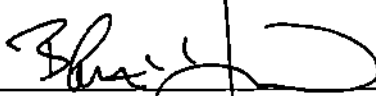
Based on all the foregoing, this court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This court notifies Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRPC provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 15 day of SEPT., 2025.



B. ALEX HYMAN
Presiding Judge
Thirteenth Judicial Circuit

Conway, South Carolina