

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM LAURENS COUNTY
Court of Common Pleas

S.C. SUPREME COURT

R, Scott Sprouse, Circuit Court Judge

Case No. 2020-CP-30-00211

Preston Shands, Jr. #168699

Appellant,

v.

State of South Carolina,

Respondent.

NOTICE OF APPEAL

Preton Shands Jr. appeals the order of the Honorable R. Scott Sprouse dated November 10, 2025. Appellant received written notice of entry of this order on November 24, 2025.

December 5, 2025



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STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

Preston Shands, Jr., #168699

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE EIGHTH JUDICIAL CIRCUIT

) Case No.: 2020-CP-30-00211

) **ORDER PARTIALLY GRANTING AND**
) **PARTIALLY DENYING APPLICANT'S POST-**
) **CONVICTION RELIEF APPLICATION**

This matter comes before the Court by way of an application for post-conviction relief ("PCR") filed by Preston Shands, Jr. ("Applicant"), on February 26, 2020. The Court convened an evidentiary hearing into the matter on December 2, 2022, at the Abbeville County Courthouse. Applicant was present at the hearing and represented by Don A. Thompson, Esq. Zachary W. Jones, of the South Carolina Attorney General's Office, represented Respondent.

After reviewing all records and evidence before the Court, this Court finds Applicant's sentence for possession of a weapon was an illegal sentence under S.C. Code Ann. § 16-23-490(A). Accordingly, that sentence must be vacated. However, as to his other allegations, this Court finds Applicant has failed to establish that he is entitled to post-conviction relief. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently in the South Carolina Department of Corrections. In October 2014, the Laurens County Grand Jury indicted Applicant for Attempted Murder (2014-GS-30-1477); Possession of a Weapon during the Commission of a Violent Crime (2014-GS-30-1478); Assault and Battery, 1st degree (2014-GS-30-1479); Burglary, 1st degree (2014-GS-30-1481); and

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Kidnapping (2014-GS-30-1482). E. Charles Grose, Jr., Esquire ("Counsel"), represented Applicant at trial. Deputy Solicitor Warren Mowry and Senior Assistant Solicitor Elizabeth White of the Eighth Circuit Solicitor's Office prosecuted the case.

On May 26, 2015, Applicant proceeded to a jury trial before the Honorable Edward W. Miller. The jury returned a verdict of guilty for all charges. On May 27, 2015, Judge Miller sentenced Applicant to life imprisonment without the possibility of parole for attempted murder, burglary, and kidnapping, each to run concurrently with an additional ten years for assault and battery and five years for possession of a weapon during the commission of a violent crime.

Applicant filed a timely notice of appeal. In his appeal, Applicant raised the following issues:

1. The trial court erred by not applying the third step of *Boston's* comparative juror analysis when the Solicitor struck three men based on their prior criminal convictions but sat a similarly situated female who also had a criminal conviction.
2. The trial court judge erred by not quashing the indictment because the grand jury presentment process in Laurens County, including in Applicant's case, violates state law and Equal Protections.
3. The trial judge erred by allowing the Solicitor to impeach Applicant by asking him if he had been previously convicted of a violent felony, suggesting to the jurors that Applicant is a violent person when he was on trial for multiple violent felony charges.
4. The trial judge erred by not instructing the jurors about the law of involuntary intoxication when Applicant's testimony supported providing the instruction.
5. The trial judge, after sustaining Mr. Applicant objection to the Solicitor's improper closing argument, erred by not striking the argument from the record and instructing the jurors to disregard it.
6. The trial judge erred by charging the jurors they could infer malice from the use of a deadly weapon when that instruction is contrary to *State v. Belcher* and was an impermissible comment on the facts of the case.

On November 8, 2017, the South Carolina Court of Appeals heard oral arguments on Applicant's appeal. On June 13, 2018, the Court affirmed Applicant's convictions for first-degree burglary, kidnapping, first-degree assault and battery, and possession of a weapon during the commission

of a violent crime, and reversed his conviction for attempted murder. *State v. Shands*, 424 S.C. 106, 817 S.E.2d 524 (S.C. Ct. App. June 13, 2018).

The State and Applicant both served petitions for rehearing on June 27, 2018. On August 16, 2018, the Court of Appeals denied both petitions for rehearing. The State subsequently filed a Petition for Writ of Certiorari on or about September 24, 2018, alleging the following:

The Court of Appeals incorrectly found the trial court erred in providing an instruction that malice may be inferred from use of a weapon. The inferred malice instruction was proper since no evidence was presented reducing, mitigating, excusing, or justifying the charge from attempted murder. The repeated stabbings occurred during the commission of a kidnapping. Any error is harmless beyond a reasonable doubt based on the abundant evidence of Appellant's malice beyond just his use of a barbecue fork to stab his victim.

Applicant also filed a Petition for Writ of Certiorari on September 24, 2018, with the following arguments:

1. The trial court erred in denying Applicant's motion for a directed verdict on the kidnapping charge because the kidnapping statute, as applied to Applicant, is unconstitutionally vague and overbroad because it did not put him on notice of what conduct is prohibited.
2. Due Process confers a right for an accused to have a full and fair opportunity to respond to the prosecution's best closing argument, meaning the State must open in full on the facts and the law and restrict its reply argument to matters raised by the defense in closing.
3. The Court of Appeals erred when it applied the third step of *Batson's* comparative juror analysis and concluded a female juror with a criminal conviction seated by the Solicitor was not similarly situated to three male jurors with criminal convictions struck by the Solicitor, when the Solicitor's sole basis for striking these jurors was criminal convictions.

On May 9, 2019, the South Carolina Supreme Court denied the cross-petitions for Writ of Certiorari. The Remittitur was issued May 15, 2019.

On August 7, 2019, Applicant filed a motion for leave to proceed *in forma pauperis* and further filed another Petition for Writ of Certiorari under the three aforementioned reasons. On October 7, 2019, Applicant's petition was denied by the United States Supreme Court.

Factual Summary

Shands and his wife ("Victim") were married and lived with their eight year-old son, Jalen, and Victim's sixteen year-old son, Trey. Victim testified she arrived home at 6:30 p.m. on Sunday. Victim changed her clothes and started watching television when Shands asked her why she would not talk to him. He started cursing. She told Shands she was going to leave and told the sons to come with her. Tr. pp. 55-59. When Victim was trying to leave, she tried to open the garage door, but then Shands would close the door each time. Tr. pp. 66-67. Shands closed the car door on her leg. Victim recalled seeing Shands on top of her son, Trey. Victim tried to leave but the garage door was half-way open. Jalen and Trey followed her in the garage, but Trey ran back in the house. Shands pulled Victim by the hair to try and get her back in the house. Tr. p. 59.

Trey came back, and Victim remembered Trey telling her to run. Victim and Jalen made it under the garage door. They went across the street to a neighbor's house. The neighbor was Bill Koon. Tr. p. 59. While inside Koon's house, she remembered glass shattering. Victim remembered trying to keep Shands from stabbing her. Tr. pp. 59-60. Victim suffered a number of wounds and scars. She did not know how many times she was stabbed, but she needed about forty to fifty stitches. Tr. pp. 62-65.

On cross-examination, Victim admitted nothing like this happened before. Tr. p. 70. Counsel asked Victim, "but the way Preston was acting that night, he was more agitated than usual right?" Tr. p. 70, lines 20-21. Victim answered, "I guess a little because he did stuff all the time." Tr. p. 70, line 22. Victim admitted Shands never physically harmed her before. Tr. pp. 70-71. However, on cross-examination, she testified in the months leading to the assault, he was "[c]ontrolling, we walked on pins and needles every day, we just didn't know what to expect." Tr. p. 71, lines 13-16. Victim did not smell alcohol on Shands. Tr. p. 69, lines 18-23.

Trey testified he was home earlier in the day with Shands. He saw Shands drinking a beer, but he did not know how much Shands drank. Tr. p. 73. Trey denied seeing Shands drinking from a clear glass containing cola. Tr. p. 80. When Victim arrived home, Victim and Shands started arguing after Shands asked why she would not talk to him. Victim told Trey and his brother they were leaving. Trey testified Shands shut the garage door to try to keep Victim from leaving. Shands also kicked the car door into her leg. Tr. pp. 73-75. Trey fell and Shands got on top of him. Tr. p. 75.

Trey managed to run back into the house and over to Koon's house. He told Koon to call 911 and ran back to his own house. Shands got off Victim long enough for her to run under the garage door towards Koon's house. However, Shands tackled Victim in front of Koon's house and started stabbing her. Trey grabbed Shands' hand to stop him from stabbing Victim. Shands left and returned with a hammer and started busting Koon's windows. Shands entered Koon's house and grabbed a knife. He chased Victim out of the house, but law enforcement arrived. Tr. pp. 75-77. Trey testified he thought Victim was going to die. Tr. p. 78.

Jalen confirmed an argument broke out between Shands and Victim. Jalen further confirmed Shands kicked the car door into Victim's leg while she was trying to leave. Trey told Jalen to call the police – that is when Shands got the fork. Jalen testified Shands held Victim by her hair and was trying to stab Victim's throat with the fork, but the fork was bent up. Tr. pp. 82-83.

Clarence "Bill" Koon, the neighbor, testified Trey was banging on his door, and when Koon opened the door, Trey told him Shands was stabbing Victim. Victim and the children ended up running to his house, soon followed by Shands. Shands and Victim struggled on the front-room floor. Tr. p. 87. Koon described the melee:

He was trying to, he looked to me he was trying to cut her throat with some kind of object wrapped around his hand, I couldn't tell at the

time what it was. But when I finally got to see the handle, it was white or it looked white. And it was wrapped around his hand like a pair of steel nooks. And he was trying to use the bottom end of it, the broke end part and he was trying to go across her throat with it.

Tr. p. 88, lines 1-8. Victim was covered with so much blood that Koon testified, "I didn't even see no part of her, all I saw was blood." Tr. p. 88, lines 12-13.

Koon went into the bathroom to tell his wife, but she was in the shower. Victim was screaming for Koon to help her. Koon grabbed his phone and called 911 from inside the shower. Returning from the bathroom, Koon saw the two boys holding Shands' hand to keep him from stabbing Victim. Koon started back for the bathroom, turned around, and they were gone. Tr. pp. 88-89.

The temporary reprieve ended when Shands returned with a hammer. Shands started smashing the front windows and went to the back of the house. Koon went to the back door and locked it. He told Shands to "cool off" but Shands busted two more windows in the back of the house and demanded Koon let him in. Shands threw his hammer through the sliding glass door and entered the house. Tr. pp. 89-90. Shands grabbed a knife from the kitchen and headed out the front door just as a law enforcement officer pulled up to the house and drew his weapon. Shands dropped his knife under the officer's command. Tr. p. 90. Koon testified the house looked like a tornado went through it. Koon explained, "It took us a long time to get the blood off the floor and off the furniture. It was a nightmare." Tr. p. 94, lines 11-18 Koon told the jury, "that man was trying to kill that woman." Tr. p. 94, lines 19-22.

Counsel asked Koon if the events were out of character for Shands. Koon replied he did not know if it was out of character or not. Tr. p. 97. On redirect, the prosecutor asked, "How would Mr. Shands react if someone tried to speak to Ms. Shands?" Koon answered, "He could get sometimes a little jealous at times. I mean he would say something to her and get her attention." Tr. p. 97, lines

10-14 (emphasis added).

Martha Koon, Koon's wife, also testified. She was in the shower when she heard the screams. She came out and saw Shands on top of Victim. She did not see the weapon, but saw Shands holding something and was going for Victim's throat. Victim incessantly screamed and blood was everywhere. The older son tried to pull Shands off Victim. Tr. pp. 99-100. Martha went back to the bathroom to dress, and Shands was gone when she returned. But Shands returned with the hammer. When Shands demanded Koon let him in, Koon told him no. Shands entered the house anyhow, smashing the sliding glass door. Shands went straight to the kitchen, took a knife, and started towards Victim. But the police arrived and he went outside. Tr. p. 100. Martha agreed Shands was always friendly and polite, except for that day of course. Tr. p. 103.

Sergeant Michael Gainey of the Laurens City Police Department responded to a 911 call about a neighbor trying to stab his wife. Tr. p. 105. Approaching the house, he heard Koon yelling "[H]elp, he is going to kill her." Tr. p. 106, lines 21-22. Sergeant Gainey saw Victim running out of the house, she ran towards his vehicle. A teenager also ran out of the house. Then Shands came out of the house with Jalen. His left hand was on Jalen's shoulder, his right hand held the knife. Sergeant Gainey pointed his revolver at Shands and told him to let Jalen go. Shands complied. Sergeant Gainey further demanded Shands drop his knife. Shands did. Shands also complied with Sergeant Gainey's request to get to the ground. Sergeant Gainey did not smell any alcohol on Shands. Tr. pp. 107-112.

Sergeant Gainey verified Shands suffered superficial injuries – he was treated for some lacerations on his hand. Tr. p. 118; p. 123. Sergeant Tony Lynch investigated the crime scene and recovered a knife, a hammer, and a broken fork with blood on it. He also found droplets of blood on the path between the two houses. Tr. pp. 147-152.

Andrew Heiney, a paramedic for the Laurens County EMS treated Victim, who appeared dazed. Her clothing was ripped, and blood was about her head, arms, and torso. The paramedics brought her into the ambulance where the lighting was better, and Heiney observed the blood was still wet. She was briskly bleeding from a laceration on her head; the hair was matted with blood. Tr. pp. 129-30. There were multiple stab wounds on her arms. Tr. p. 131. Victim was in pain and experienced difficulty breathing. Tr. p. 132. Heiney opined the wounds were life threatening. Tr. p. 132. EMS decided, based on the severity of Victim's injuries, to transport Victim by helicopter rather than ambulance to the hospital. Tr. pp. 133-34.

Julie Medlin, also with the Laurens County EMS was called by the defense, but on cross-examination confirmed Shands was alert and oriented at the time he was transported for medical treatment and explained, "that means he knew who he was, he knew where he was, he knew the events leading up to why we were called and just everything that was going on around him, like what day and time it is." Tr. p. 186, lines 9-12. Shands did not appear disoriented or intoxicated. Tr. p. 186, lines 13-16.

Shands was covered with small glass shards. P. 186, lines 17-19. Shands' injuries were "a laceration to the right hand, fifth digit; . . . a laceration to the outside of his left calf and an abrasion to the back of the left shoulder." Tr. p. 186, lines 20-24.

Shands testified in his own defense to claim he was intoxicated while he committed the brutal crimes. Shands started with a beer, but spilled it. So he found "this stuff I had bought at work." Tr. p. 191, line 21 - 192, line 2. Shands explained, "It was stuff that people told me was homemade moonshine. You couldn't smell it but you knew it was alcohol in it when you tasted it." Tr. p. 192, lines 8-13. Shands never drank moonshine before, but he started drinking it. It was so strong that when he tasted it straight, he spit it out of the cup. Shands mixed the moonshine with ice and two

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liters of coke. It still tasted strong. Tr. pp. 192-93.

Shands claimed he usually just goes to sleep when he drinks. Tr. p. 193, lines 14-24. Shands claimed the moonshine did not affect him this way though, instead it "took me clean out of my round." Tr. p. 194, lines 11-13. Shands speculated the moonshine "wasn't just alcohol" but "was something more strong and powerful in there, that they put in there other than alcohol. Because normally alcohol just makes me drunk and fall out and go to sleep." Tr. p. 194, lines 13-22. Therefore, Shands concluded, the moonshine must have contained some drug. Tr. p. 194, lines 19-25.

Shands admitted he was responsible for what happened to Victim. He claimed he did not remember anything from the incident. Tr. pp. 195-96. Shands admitted that although the marriage was good at first, he became jealous and controlling when he started drinking. Tr. p. 199, line 22 – p. 200, line 2.

On cross-examination, Shands described the moonshine further:

Q: So, tell me about this moonshine, is this something you bought from somebody you work with?

A: Yes, ma'am.

Q: So it is not something, now they sell moonshine in the liquor stores.

A: I don't know if it is real moonshine, I don't know, I never tried it, it is my first time trying it.

Q: But this is something you bought, do you know actually who made it?

A: No, it is just the guys told me, before you quit drinking why don't you try the granddaddy of all, the cremator of all whiskey. It is the granddaddy, until you tasted the granddaddy you can never say you drunk anything.

Q: So, you were home alone with two children and you decided to

drink something that you had no idea where it came from?

A: Yes, ma'am.

Q: And you had no idea what was in it and you had no idea how you were going to react to it. That is what you are telling us?

A: Yes, ma'am.

Tr. p. 201, lines 2-22.

Shands admitted he drank the moonshine of his own freewill, no one forced him to drink it. Shands admitted he knew it was stronger than normal alcohol. Even with the cola mixed in, it still tasted strong. Tr. p. 202. Shands did not deny his violent acts, he claimed, "I know I did it but I don't understand it, I don't understand what happened that night." Tr. p. 204, lines 9-10.

Present Application

In his post-conviction relief application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "Not calling Officers Hal Martin and Tony Lynch to testify during the motion to quash the indictments based on improper grand jury process."
 - b. "Opening the door to Mr. Shands' character and prior criminal history."
 - c. "Not objecting to the trial judge imposing a sentence of five years imprisonment for possession of a weapon during the commission of a violent crime when S.C. Code Ann. § 16-23-490(A) expressly prohibits imposing an additional sentence when the Court imposed a life sentence without the possibility of parole."

Applicant requests a new trial.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, and weighed the testimony accordingly. Before the Court are Applicant's records from the South Carolina Department of Corrections, the transcript of Applicant's trial, the records of the Laurens County Clerk of Court regarding the subject

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convictions and sentences, Applicant's appellate records, and Applicant's application for post-conviction relief. This Court has reviewed the records submitted to it by the parties, the legal arguments made by the attorneys, and the pleadings. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented:

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). Applicant must prove his factual allegations by a preponderance of the evidence. 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 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.”).

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. A reasonable probability is “a probability sufficient to undermine confidence in the outcome.” *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 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)).

Failure to call Officers Hal Martin and Tony Lynch as Witnesses

In his PCR application, Applicant claims Counsel was ineffective for failing to call Officers Hal Martin and Tony Lynch to testify during his motion to quash the indictments. The Court finds Applicant has failed to meet his burden of proof as to this allegation.

At trial, Counsel moved to quash Applicant's indictments on the ground that the officer who testified before the Laurens County grand jury was not named on the indictments, in violation of S.C. Code Ann. section 14-7-1550. Tr. pp.26-32. However, Counsel did not call any witnesses to substantiate his claim, and the trial court denied the motion to quash. The court of appeals affirmed the trial court's decision on direct appeal, holding that Counsel "did not present clear evidence that there was an abuse of the grand jury proceedings" and that his argument was "pure speculation." *Shands*, 424 S.C. at 119-20, 817 S.E.2d at 531.

Applicant now contends Counsel was ineffective on this point because his failure to call any witnesses at that stage of the proceeding left the record bereft of the evidence necessary to support his motion to quash the indictment. At the PCR hearing, however, Applicant did not call those witnesses either. Therefore, Applicant's claim that additional testimony would have supplied the necessary proof to warrant quashing the indictments is merely speculative. *See, e.g., Martin v. State*, 427 S.C. 450, 455, 832 S.E.2d 277, 279-80 (2019) (holding a PCR applicant who claims trial counsel was ineffective for failing to call certain witnesses must produce those witnesses or their testimony at the PCR hearing; an applicant's "mere speculation" as to what a witness's testimony would have been cannot, by itself, support a finding of prejudice).

There was no evidence presented at the evidentiary hearing before this Court that would substantiate Applicant's position on this issue. Accordingly, this Court finds Applicant has failed to prove he was prejudiced by Counsel's conduct, which necessarily precludes a finding of ineffective assistance as to this allegation. *See Strickland*, 466 U.S. at 696-97 (holding a court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed). This allegation is,

therefore, denied and dismissed with prejudice.

Opening the Door to Evidence of Applicant's Criminal History

Applicant also claims Counsel was ineffective for eliciting testimony related to his character from the State's witnesses, thereby "opening the door" for the State to introduce evidence that Applicant had a prior conviction for a violent felony.

At trial, Counsel cross-examined multiple witnesses about whether Applicant's violent actions were out-of-character for him. The trial court then allowed the State, over Counsel's objection, to introduce evidence that Applicant had a prior conviction for murder, provided it was only referred to as a "violent felony." Tr. pp.175-76. The court of appeals, on direct appeal from Applicant's conviction, held Applicant's prior murder conviction was not admissible for impeachment purposes under Rule 609(b), SCRE. *Shands*, 424 S.C. at 121-24, 817 S.E.2d at 532-33. However, because Counsel had asked numerous witnesses about Applicant's character for non-violence, the court of appeals held Counsel had "opened the door" for the State to respond with evidence of Applicant's prior conviction of a violent felony. *Id.* at 124, 817 S.E.2d at 533-34.

The Court finds Counsel's cross-examination was not an attempt to dispute that Applicant perpetrated the attack. Rather, Counsel was attempting to elicit evidence of Applicant's non-violent character in order to reinforce the defense theory of "involuntary intoxication": that Applicant's violent outburst was the result of his moonshine being "spiked" with an unknown psychoactive substance. Normally, where a defense attorney takes some action in pursuit of a reasonable trial strategy, his performance cannot be deemed deficient, even if it "opens the door" to a response by the State that would otherwise be unavailable. Many reasonable defense strategies necessarily entail a degree of calculated risk, and a reviewing court should not second-guess an

attorney's strategic decisions merely because, in hindsight, those risks do not appear to have paid off. "[I]t is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." *Strickland*, 466 U.S. at 689.

Nevertheless, this Court reluctantly concludes that Counsel's performance on this point was deficient. Counsel's strategy was to elicit evidence of Applicant's non-violent character to lend credence to Applicant's involuntary intoxication defense; the reasonableness of this strategy necessarily depends on the availability of that defense. In this case, Counsel should have foreseen that the facts of this case would *not* give rise to an involuntary intoxication defense. According to Applicant's own testimony, his attack on Victim was precipitated by his own *voluntary* consumption of "homemade moonshine." He admitted he did not know who made it, what was in it, or how it would affect him, except that he was aware it was stronger than ordinary whiskey. As the court of appeals pointed out on direct appeal, Applicant "knowingly consumed an illegal, unregulated liquor and had no right to assume the moonshine would cause a predictable intoxicating effect." *Shands*, 424 S.C. at 126, 817 S.E.2d at 534. Therefore, both the trial court and the court of appeals ruled that Applicant was not entitled to an involuntary intoxication jury charge.

Because the involuntary intoxication theory was unsupported by the evidence, Counsel's questioning of the State's witnesses as to Applicant's character for non-violence did nothing to help the defense; there was never any dispute that Applicant perpetrated the assault on Victim. However, raising the issue of Applicant's character did help the *prosecution*, by "opening the door" to otherwise-inadmissible evidence of Applicant's prior conviction of a violent felony. Under these circumstances, it was not reasonable for Counsel to put Applicant's character in issue.

Accordingly, the Court finds Counsel's performance was deficient as to this allegation.

However, deficiency is only one prong of the ineffective assistance analysis. Applicant still bears the burden of proving that he was prejudiced by his attorney's deficient conduct; that is, he must prove there is a reasonable probability that, but for Counsel's actions, the result of his trial would have been different. *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. The Court finds Applicant has not met this burden.

The court of appeals correctly characterized the evidence against Applicant as "overwhelming." *Shands*, 424 S.C. at 128, 817 S.E.2d at 535. Not only was there direct evidence in the form of testimony from Victim and numerous eyewitnesses, but Applicant himself admitted that he committed the acts in question. Furthermore, as already explained, Applicant had no viable defense: Applicant's voluntary intoxication from allegedly drinking illegal moonshine does not excuse his crimes. In light of this overwhelming evidence of guilt, the mere fact that the State was able to introduce evidence of Applicant's prior conviction for a "violent felony" is not likely to have affected the result of the trial. Therefore, this Court finds Applicant has failed to prove he was prejudiced by Counsel's deficient performance. This allegation is, therefore, denied and dismissed with prejudice.

Illegal Sentence under S.C. Code Ann. § 16-23-490(A)

Applicant also claims he was improperly sentenced to five years' imprisonment on the charge of possessing a weapon during the commission of a violent crime. S.C. Code Ann. section 16-23-490(A) provides:

If a person is in possession of a firearm or visibly displays what appears to be a firearm or visibly displays a knife during the commission of a violent crime and is convicted of committing or attempting to commit a violent crime as defined in Section 16-1-60, he must be imprisoned five years, in addition to the punishment provided for the principal crime. *This five-year sentence does not*

apply in cases where the death penalty or a life sentence without parole is imposed for the violent crime.

(emphasis added). Pursuant to the plain text of this statute, the additional five-year sentence for possession of a weapon during the commission of a violent crime does not apply where the defendant receives a sentence of life without parole for the underlying violent crime, as Applicant did in this case. Therefore, the Court finds Applicant's five-year sentence for possession of a weapon during the commission of a violent crime is an illegal sentence and must be vacated. This relief does not affect the validity of Applicant's other sentences or any of his convictions.

[conclusion and signature on following page]

III. CONCLUSION

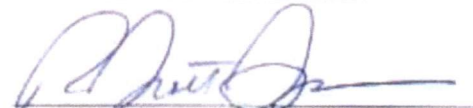
Based on all the foregoing, this Court finds and concludes that Applicant's five-year sentence for possession of a weapon during the commission of a violent crime must be vacated. The Court finds Applicant has not met his burden of proof as to his other allegations, which must be denied and dismissed with prejudice.

This Court notifies the 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), Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. 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's attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That Applicant's five-year sentence on the charge of possession of a weapon during the commission of a violent crime be vacated;
2. That the remaining allegations raised in the Application for Post-Conviction Relief be denied and dismissed with prejudice; and
3. The Applicant be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 10 day of November, 2025.



R. SCOTT SPROUSE
Presiding Judge
Eighth Judicial Circuit

Wallace

, South Carolina