

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Thomas McGee, III., Circuit Court Judge

Case No. 2022-CP-10-3583

Derrick L. Porter,

Appellant,

v.

State of South Carolina,

Respondent.

NOTICE OF APPEAL

Derrick L. Porter 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 Thomas McGee, III. Following the hearing, Judge McGee issued a written order denying and dismissing the application with prejudice filed December 1, 2025. Undersigned counsel was emailed a written filed copy of said order on December 2, 2025.

December 30, 2025

s/ Denise Grainger. Swope
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STATE OF SOUTH CAROLINA)
 COUNTY OF CHARLESTON)
)
 Derrick L. Porter, #376002,)
)
 Applicant,)
 v.)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT

CASE NO. 2022-CP-10-03583

ORDER OF DISMISSAL

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 JUDGE: J. W. ...
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This matter comes before the Court by way of Derrick L. Porter's (Applicant's) application for post-conviction relief (PCR) filed on August 9, 2022. On October 16, 2025, an evidentiary hearing was held at the Charleston County Courthouse before the Honorable Thomas William McGee, III. Applicant was present and represented by Denise Swope, Esquire. Assistant Attorney General Kylee Kanealey represented Respondent.

Following a thorough review of the record, along with the testimony and evidence presented at the hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismisses this action with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving a thirty-five-year sentence. During its November 2016 term, the Charleston County Grand Jury indicted Applicant for Attempted Murder (2016-GS-10-06124) and Possession of a Weapon During the Commission of a Violent Crime (2016-GS-10-06125). On April 11, 2018, Applicant proceeded to a jury trial before the Honorable R. Markley Dennis, Jr. Grant Smaldone, Esquire, represented Applicant. Assistant Solicitors Benjamin Chad Simpson and Daniel Cooper prosecuted

the case. The jury found Applicant guilty as indicted. On April 12, 2018, Judge Dennis sentenced Applicant to consecutive terms of thirty years' imprisonment for Attempted Murder, and five years' imprisonment for Possession of a Weapon During the Commission of a Violent Crime.

Applicant filed a timely notice of appeal. Appellate Defender David Alexander perfected the appeal by filing an Anders¹ brief and a petition to be relieved as counsel with the Court of Appeals on the following issue:

- I. Did the circuit court err in denying Porter's request to give additional instructions on self-defense, including (1) "the right to act on appearances," (2), "the relevance of prior difficulties," and (3) "that a person does not have to wait before acting in self-defense?" State v. Nichols, 325 S.C. 111, 117, 481 S.E.2d 121 (1997)

The South Carolina Court of Appeals denied the motion to be relieved as counsel and directed the parties to brief the issue. Following briefing and oral argument, the South Carolina Court of Appeals affirmed Applicant's conviction on the merits. State v. Porter, Op No. 2022-UP-173 (S.C. Ct. App. filed April 20, 2022). The Remittitur was sent on May 13, 2022.

CURRENT APPLICATION

On August 9, 2022, Applicant filed this current PCR application alleging he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. Counsel failed to make timely objections.
 - b. Counsel did not investigate crime scene.
 - c. Counsel presented an invalid defense.

Applicant requested relief in the form of the vacation of his conviction.

On October 16 at the evidentiary hearing, Applicant presented an unfiled amended PCR application alleging:

1. Ineffective Assistance of Counsel

¹ Anders v. California, 386 U.S. 738 (1967).

- a. Failure to adequately negotiate and/or explain any and all plea offers in this case, including but not limited to, all possible benefits of said plea offers and the consequences of rejecting same;
- b. Failure to preserve the appellate issue that the trial judge erred in denying Applicant's request to give additional instructions on self-defense, including the right to act on appearances and that a person does not have to wait before acting in self-defense.

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). To prove ineffective assistance of counsel, the applicant must show counsel was deficient, and the deficiency prejudice applicant. Strickland v. Washington, 466 U.S. 668 (1984). When evaluating deficiency, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E. 2d at 635 (quoting Strickland, 366 U.S. at 690). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to received relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. To prove prejudice, an applicant must prove counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. at 117-18, 386 S.E.2d at 625.

Failure to Make Timely Objections

Applicant failed to present any evidence, testimony, or legal authority regarding these allegations at the evidentiary hearing. "When a party provides no legal authority regarding a particular argument, the argument is abandoned, and the court will not address the merits of the issue." Palmer v. State, 427 S.C. 36, 47, 829 S.E.2d 255, 261 (Ct. App. 2019) (citing State v.

Lindsey, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011). Therefore, the Court deems this allegation abandoned.

Failure to Investigate Crime Scene

Applicant failed to present any evidence, testimony, or legal authority regarding these allegations at the evidentiary hearing. "When a party provides no legal authority regarding a particular argument, the argument is abandoned, and the court will not address the merits of the issue." Palmer v. State, 427 S.C. 36, 47, 829 S.E.2d 255, 261 (Ct. App. 2019) (citing State v. Lindsey, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011)). Therefore, the Court deems this allegation abandoned.

Failure to Present a Valid Defense

Applicant failed to present any evidence, testimony, or legal authority regarding these allegations at the evidentiary hearing. "When a party provides no legal authority regarding a particular argument, the argument is abandoned, and the court will not address the merits of the issue." Palmer v. State, 427 S.C. 36, 47, 829 S.E.2d 255, 261 (Ct. App. 2019) (citing State v. Lindsey, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011)). Therefore, the Court deems this allegation abandoned.

Failure to Communicate Plea Offers

Applicant alleged counsel was ineffective for failing to explain all plea offers in this case and the benefits and consequences of the pleas. This Court finds Applicant did not prove this ground. Counsel testified that he engaged in plea negotiations and received a 20-year offer. Counsel testified that he thoroughly explained the offer to Applicant, and he had no concerns with Applicant's understanding.² Counsel testified he met with Applicant at least nine times and had

² Included in the record is a letter from counsel dated May 23, 2027, to Applicant conveying the 20-year plea offer.

extensive written correspondence with Applicant. This Court finds counsel's testimony *credible*. Based on the record and counsel's credible testimony given at the PCR hearing, this Court finds counsel was not deficient. Counsel relayed and discussed the plea offer to Applicant, and Applicant chose to reject the plea offer and roll the dice and proceed to trial. Applicant has failed to prove deficiency and prejudice and thus, this claim is denied.

Failure to Preserve Appellate Issue

Applicant alleged counsel was ineffective for failing to preserve the appellate issue that the trial judge erred in denying Applicant's request to give additional instructions on self-defense, including (1) "the right to act on appearances," and (2) "that a person does not have to wait before acting in self-defense." This Court finds Applicant did not prove this ground. First, although not requested by counsel, the right to act on appearances *was* charged to the jury. (Tr. 319). Therefore, the record directly refutes Applicant's allegation.

Second, counsel was not deficient for failing to request the additional charge "that a person does not have to wait before acting in self-defense" because Applicant was not entitled to the additional jury charge. "Once the right to fire in self-defense arises, a defendant is not required to wait until his adversary is on equal terms or until he has fired or aimed his weapon in order to act." State v. Starnes, 340 S.C. 312, 531 S.E.2d 907 (2000). Here, the right to self-defense never arose because Applicant was the aggressor and brought the situation on himself. The victim tried to leave multiple times while Applicant followed him. First, the victim walked away from Applicant by going into the Quick Mart, and Applicant proceeded to wait for him for two minutes outside of the store. (Tr. 60). The victim then tried to leave again by walking to his vehicle, and Applicant followed him to his vehicle. (Tr. 61). Although instructed, Applicant was not entitled to the basic self-defense charge, much less any additional self-defense instructions. Critically, no evidence

showed the victim ever approached or threatened Applicant. This Court finds counsel was not deficient in failing to request this charge because there was no evidence to support it. Further, Applicant did not prove that had counsel requested the instruction and it had been given, there is a reasonable probability the outcome would have been different and thus, failed to prove prejudice. See Cherry at 117-18, 386 S.E.2d at 625. Applicant has failed to prove deficiency and prejudice and thus, this claim is denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that 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 is **DENIED and DISMISSED WITH PREJUDICE.**

Should Applicant wish to secure appellate review, 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. 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), SCRCPC, provides that PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf if the Applicant wishes to seek appellate review. Attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 24 day of November, 2025.



THOMAS WILLIAM MCGEE, III
Presiding Judge
Ninth Judicial Circuit

Columbia, South Carolina