

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Marion County

Thomas A. Russo, Circuit Court Judge

GLENN PERNELL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2011-189086

SECOND SUPPLEMENTAL APPENDIX

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Decision to testify

Applicant alleges that he wanted to testify at trial but was advised not to testify. Counsel testified that he did not think it would be beneficial for his defense for Applicant to testify. On the other hand, by not presenting evidence, Counsel gained the strategic advantage of last closing argument. Counsel testified that it was Applicant's decision to not testify. The trial court advised Applicant of his right to decide whether or not testify, informing Applicant: "with regard to such an important question, you would consult with your attorney but the ultimate decision rests with you." Tr. p. 243, lines 10-12. Trial counsel further informed Applicant: "I have had in the past people tell me later, ah, 'Well, I didn't testify because my attorney told me not to.' But I'm telling you. The decision is yours." Tr. p. 243, lines 15-17.

This Court finds Applicant has not met his burden of proving ineffective assistance of counsel. Counsel's advice not to testify was reasonable. Applicant has failed to show counsel's performance was deficient in this regard. Further, Applicant has failed to show that he was prejudiced. Applicant failed to present evidence that his testimony would likely have changed the outcome of trial. On the other hand, Counsel skillfully argued the final closing argument, which would have been lost if Applicant testified. This allegation is denied.

CONCLUSION

Based on the foregoing, this Court finds and concludes that the 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 advises the parties that in order to secure the appropriate appellate review, notice of appeal must be served and filed within thirty (30) days after receipt by counsel of