RECEIVED
Mar 10 2026
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT
APPEAL FROM YORK COUNTY
Court of Common Pleas
The Honorable Eugene Griffith, Jr., 2017 PCR Action Judge
The Honorable Thomas Rode, 2025 PCR Action Judge

2025-CP-46-02258

QUENTIN EVANS, #363391,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Quentin Evans appeals the denial of his post-conviction relief application. The post-conviction relief action was heard and denied by the Honorable Eugene Griffith, circuit court judge, on April 2023, and was denied by written order issued filed on September 6, 2023. Applicant was granted an *Austin* appeal by the Honorable Thomas Rode, circuit court judge. The order was filed on March 5, 2026. Applicant received notice of the judgement on March 9, 2026.

/s Chelsey F. Marto
Chelsey F. Marto, Esquire
Attorney for the Applicant
The Law Office of Chelsey F. Marto, LLC
P.O. Box 8795
Columbia, SC, 29201
(864)-404-5583

Other Counsel of Record:
Jordan Killough, Esquire
Office of the Attorney General, State of SC
P.O. Box 11549
Columbia, SC, 29211-1549

Attachment B

STATE OF SOUTH CAROLINA COUNTY OF YORK	IN THE COURT OF COMMON PLEAS FOR THE SIXTEENTH JUDICIAL CIRCUIT
Quentin Jarvis Evans, #363391, Applicant, v. State of South Carolina, Respondent.	SC Case No.: 2017-CP-46-1938 **ORDER OF DISMISSAL**

This matter comes before the Court by way of Applicant Quentin Jarvis Evans's application for post-conviction relief filed July 6, 2017. The Court convened an evidentiary hearing into the matter on April 17, 2023, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Michael D. Brown, Esquire. 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 cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is currently confined in the South Carolina Department of Corrections. Applicant was indicted at the April 2014 term of the York County Grand Jury for homicide by child abuse (2014-GS-46-1229). David C. Cook, Esquire ("Counsel"), represented him. Solicitor Kevin Brackett and Deputy Solicitor Willy Thompson represented the State. On March 16–19, 2015, Applicant proceeded to a jury trial before the Honorable Derham Cole after which he was found guilty. He was sentenced to imprisonment for forty-five years.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Appellate Defender David Alexander filing a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967). The South Carolina Court of Appeals affirmed Applicant's conviction by an unpublished opinion. *State v. Quentin Evans*, Op. No. 2016-UP-495 (Ct. App. Filed November 23, 2016). The remittitur was sent December 12, 2016.

Factual Summary

On January 23, 2014, paramedics responded to a 911 call at Applicant's residence reporting an unconscious child who was not breathing. The call was received at 6:36 a.m. The child ("Victim") was determined to be Applicant's six-week-old daughter. Paramedics attempted to perform CPR on Victim, but Victim appeared to have been without oxygen for some time and showed no signs of life. Applicant told paramedics that Victim had fallen off a bed. (Tr. pp.77–85).

Dr. Craig Hart performed an autopsy on Victim and determined that her death was a homicide. He noted several bruises, which appeared to be fresh, on Victim's forehead, face, neck, arms, and chest. At the trial, Dr. Hart was qualified as an expert on forensic pathology. He opined that a six-week-old child is too young to control its arms or to walk, so Victim's extensive bruising could not have been caused by hitting herself or by an accidental fall. In addition, some of Victim's bruises were located on parts of the body that were not likely to have resulted from a fall. Dr. Hart testified that many of the bruises fit the pattern of fingers and were more consistent with grasping injuries than with an accidental fall. Dr. Hart also testified Victim had a broken collarbone, which would likely have caused her to be inconsolable with pain. In addition, Dr. Hart noted fractures at the junction of the spine and the ribs, which he opined could not have been caused by blunt force trauma like an impact injury but were more consistent with a forceful grasping injury. When

examining Victim's head, Dr. Hart noticed a large linear bruise on the forehead that was consistent with a severe impact injury. There was significant subdural hemorrhaging inside the skull consistent with an acceleration-deceleration injury (i.e., violent shaking followed by an impact). He also noticed multiple fresh retinal hemorrhages in both eyes, which he testified could not have been caused by a single fall but would have required Victim to be vigorously shaken several times. He testified that Victim's injuries were not caused by post-mortem administration of CPR or by falling off a bed. Based on the totality of Victim's injuries, Dr. Hart opined her death was caused by abuse. (Tr. pp.109–85).

On cross-examination, Counsel asked Dr. Hart whether Victims injuries could have been caused by falling off the bed and then being crushed between the bedframe and the wall when Applicant jumped on the bed. Dr. Hart testified that scenario might explain some of the bruising and the compression injury to the ribs, but it would not explain the pin-point bruises, retinal hemorrhaging, or subdural hemorrhaging observed in Victim. He also testified that scenario would likely have caused fractures in the skull and bleeding from the ears, nose, and mouth, which Victim did not have. (Tr. pp.186–201).

Deputy coroner Christine Westover testified that she interviewed Applicant a few days after the incident. Applicant told her that he was watching Victim while the child's mother was absent. He stated he left Victim alone in the bedroom at about 2:33 a.m. to heat a bottle. When he returned, Victim had fallen in between the bed and the wall and was crying. He picked Victim up by her left arm and noticed her head appeared limp. He then dozed off and woke up again at 5:37 a.m., whereupon he noticed that Victim was limp and was not breathing. Applicant admitted he had been using marijuana, which was confirmed by a drug test. (Tr. pp.204–37).

Detective Bruce Haire obtained a written statement from Applicant in which Applicant again claimed he left Victim alone in the bedroom to heat a bottle, although Applicant stated the time was after 4:00 a.m. Applicant claimed he returned to the bedroom when he heard Victim crying. He saw that Victim had fallen between the wall and the bed, and he jerked Victim up by her arm. He noticed Victim's head was loose. After falling asleep for a few minutes, Applicant woke up to find that Victim was not breathing and did not have a pulse at about 5:37 a.m. Detective Haire noted that Applicant's 911 call was made around 6:37 a.m., an hour later. Applicant denied shaking Victim, but he stated he sometimes played rough with her by tossing her a few inches in the air, and he admitted that he had smoked marijuana at one point in the afternoon while Victim was sleeping. Detective Haire testified Applicant never claimed to have jumped on the bed and inadvertently caused the bed to pin Victim against the wall. (Tr. pp.302–69).

Investigator Trey Amick was qualified as an expert in forensic data recovery from mobile devices. He testified he recovered data from Applicant's mobile phone including photographs, call logs, and internet browsing data. Through him, the State introduced several photographs of Applicant smoking marijuana. Investigator Amick testified the EXIF data from the photographs indicated most of them were taken between 10:46 and 10:47 p.m. on the night of Victim's death. He also testified Applicant's phone showed sporadic internet browsing activity between 9:35 p.m. and 4:22 a.m. that night, as well as telephone activity at 3:44 a.m. (Tr. pp.371–90).

Applicant presented multiple character witnesses from among his friends and family. (Tr. pp.395–465). Applicant also testified in his own defense. He denied abusing Victim. He claimed Victim's injuries occurred when Victim accidentally fell off the bed when he momentarily lef the room to prepare a bottle at approximately 5:32 a.m. When he returned to the room a few minutes later, he noticed Victim was crying loudly and was not on the bed, so he ran and jumped on the

bed and dragged Victim out from between the bed and the wall by her arm. He noticed Victim's head was limp and she did not respond when he tried to give her a pacifier. He lay down beside her on the bed and fell asleep for a few minutes. When he woke up, he saw that Victim's eyes were open, and she was not breathing and had no pulse. He ran to alert the rest of his family. He claimed that he initially reported waking up at 5:37 because he thought that was what the clock in the living room said, but later he thought he had mistaken a 6 for a 5. He also denied smoking marijuana on the night Victim died; he claimed the photographs of him smoking marijuana were taken the prior morning, but the timestamp changed later that night when he saved them to a different location on his phone. He acknowledged that he was the only person caring for Victim at the time of the injury. (Tr. pp.465–531).

Present Application

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

1. Ineffective assistance of counsel
    a. "Counsel was ineffective for failing to investigate the case."
    b. "Counsel failed to request for a jury instructions [*sic*] on the defense of accident when such a charge was supported by the evidence, the defendant testimony and the defense's theory of the case."
    c. "Counsel failed to object and argue the state never established a logical connection between the smoking photos and the crime charged."
    d. "Counsel abandon cross examination of computer specialist."
    e. "Counsel failed to obtain an expert witness for the defense."
    f. "Counsel failed to properly acquaint himself with the law and the facts surrounding the case and as a direct result of his intentional negligence, there was a very serious error in his assessment of both the law and the facts."

As relief, Applicant requests the Court "[v]acate conviction and sentence and remand for a judgment of acquittal and any other relief this court deems just and proper."

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 York County Clerk of Court regarding the subject conviction, Applicant's appellate records, and the 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

Applicant's allegations of ineffective assistance of counsel are without merit. 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. "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)).

Allegations a, e, and f: Counsel failed to fully investigate the case.

Applicant argues Counsel failed to investigate the case by not calling certain witnesses or looking into certain issues. Specifically, he claims Counsel did not call a witness, Talisha Banks, who allegedly saw Victim "scootch," which (if believed by the jury) would have defeated the State's argument that the six-week-old Victim could not have fallen out of bed on her own. He also claims Counsel failed to call certain character witnesses. He argues that Counsel should have called Dr. Wren, of Spartanburg, as an expert to rebut the testimony of Dr. Hart. He also claims Counsel failed to investigate Applicant's mental health issues.

At the evidentiary hearing, Counsel testified he called all the witnesses Applicant wanted him to call, except for witnesses who told him they would not testify favorably. Counsel acknowledged that he did not speak to Dr. Wren; however, he recalled that he had numerous conversations with Dr. Joel Sexton, who was highly recommended as an expert in forensic pathology, and he got him to independently review the medical evidence in the case. According to Counsel, after he had reviewed the autopsy evidence, Dr. Sexton agreed with the State's expert that Victim's death was consistent with shaken baby syndrome and was likely due to child abuse. Counsel decided not to call Dr. Sexton as a witness because his testimony would have supported the State's case. Counsel recalled meeting with Applicant's father, mother, and other character witnesses; he also talked to the forensic pathologist, the coroner, and the DSS agent. He remembered that Applicant was depressed, but he denied that Applicant ever appeared to be mentally incapacitated.

The Court finds Applicant has not met his burden of proving Counsel's performance was deficient. Counsel credibly testified that he thoroughly investigated the case, including the character witnesses Applicant urged him to speak to and an independent expert in forensic pathology. Counsel further credibly testified that he either called those witnesses to testify at Applicant's trial or, as in the case of Dr. Sexton, strategically decided not to call them because he believed they would not be helpful. Counsel credibly testified that Applicant showed no signs of mental problems that would have warranted additional investigation of Applicant's mental health. The Court finds, based on this credible testimony, that Counsel's investigation was reasonable.

Furthermore, Applicant has not met his burden of proving that he was prejudiced by Counsel's alleged failure to investigate. An applicant who claims counsel was ineffective for failing to investigate or present certain evidence at trial must introduce that evidence at the post-conviction relief hearing. *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); *Dempsey v. State* 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (holding a PCR applicant failed to show prejudice from his trial counsel's failure to hire an expert because he did not have an expert testify at his PCR hearing), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018); *Taylor v. State*, 258 S.C. 369, 378, 188 S.E.2d 850, 854 (1972) (holding a PCR applicant's allegation that his trial counsel failed to adequately investigate his case was unsupported where the applicant failed to point out any beneficial evidence which could have been discovered by further investigation). Although Applicant complains that Counsel should have called additional witnesses and consulted Dr. Wren, he has failed to introduce the testimony of any of those witnesses at the evidentiary hearing to prove that their testimony would have been favorable.

Accordingly, this allegation is denied and dismissed with prejudice.

Allegation b: Counsel failed to request a jury instruction on the defense of accident

Applicant argues Counsel failed to request a jury instruction on the defense of accident. The Court finds this allegation is without merit.

It is clear from the trial transcript that Counsel's strategy was to argue that Victim's death was the result of a tragic accident, rather than child abuse. Counsel attempted to persuade the jury to believe Applicant's account that Victim fell off the bed while he was in another room and that Victim's injuries resulted from the fall combined with the accidental moving of the bed when Applicant jumped on it to extricate Victim from between the bed and the wall. (Tr. pp.535–56). The solicitor, in his closing argument, denied that Victim's death was an accident based on the autopsy evidence. (Tr. pp.556–85). However, while the parties were entitled to rely on the colloquial meaning of the word "accident" in their arguments to the jury, the *accident defense*—as a legal concept—would have to be charged according to its specialized meaning under South Carolina law.

Applicant has not provided this Court with a specific example of an accident instruction that would have been appropriate in this case. One formulation of the defense of accident that has been used in South Carolina is as follows:

> The defendant has raised the defense of accident. The burden is on the State to prove beyond a reasonable doubt that the killing was not accidental.
>
> Harm caused to another, including death, cannot entail criminal responsibility for the defendant if the harm was accidentally inflicted without intent to harm and without recklessness or negligence.
>
> Where the death of a human being is the result of accident or misadventure, in the true meaning of the term, no criminal

> responsibility attaches to the act of the slayer. A homicide will be excusable on the ground of accident when:
>
> (1) the killing was unintentional;
> (2) the defendant was acting lawfully; and
> (3) due care was exercised in the handling of the weapon.
>
> A homicide is not excusable on the ground of accident unless it appears that the defendant was acting lawfully.

Defense of Accident, Anderson, *S.C. Requests to Charge - Criminal*, § 6-2. This formulation is obviously inapplicable to Applicant's case because this charge posits that the killing was accomplished through the use of a "weapon." Here, neither the State nor the defense claim that Victim was killed by a weapon, and there was no evidence at the trial to support an inference that a weapon was used.

A more general formulation of the defense of accident is this:

> Where the death of a human being is the result of accident or misadventure, in the true meaning of the term, no criminal responsibility attaches to the act of the slayer. If it be shown that the killing was unintentional, that it was done while the perpetrator was engaged in a lawful enterprise and was not the result of negligence, the homicide will be excused on the score of accident.

23 S.C. Jur. *Homicide* § 3 (quoting *State v. Brown*, 205 S.C. 514, 521, 32 S.E.2d 825, 828 (1944)). While this charge does not include a reference to a weapon, both it and the other charge expressly state that the defense of accident does not apply when the homicide is the result of *negligence*.

Homicide by child abuse, however, requires "extreme indifference to human life," which is a more culpable mental state than negligence. "Under S.C. Code Ann. § 16-3-85(A), a person is guilty of homicide by child abuse if the person causes the death of a child under the age of eleven while committing child abuse or neglect, and the death occurs under circumstances manifesting an extreme indifference to human life." *State v. McKnight*, 352 S.C. 635, 644, 576 S.E.2d 168, 172–

73 (2003). Our appellate courts have held that "extreme indifference" is a mental state more closely akin to recklessness or willfulness than to mere negligence. *See id.* at 644–45, 576 S.E.2d at 173 (analogizing the "extreme indifference" standard to that required for reckless homicide cases, namely "a conscious failure to exercise due care or ordinary care or a conscious indifference to the rights and safety of others or a reckless disregard thereof").

Not only does the technical meaning of the accident defense misstate the requisite mental state for homicide by child abuse, but the language of the accident defense is actually *more* favorable to the State than the language of the homicide by child abuse statute. While the statute requires the State to prove "extreme indifference," the law of accident will be satisfied—and the defense unavailable—if the State proves mere "negligence." Had Counsel insisted on an accident charge under South Carolina law, it could have misled the jury into believing the State only had to prove negligence to prevail, rather than extreme indifference to human life.

Because the defense of accident does not fit the law or facts of Applicant's case, Applicant has not met his burden of proving that Counsel was deficient for not requesting such a charge. Moreover, because Counsel was still able to vigorously argue that Victim's death was an accident according to the colloquial meaning of the word, Applicant has also failed to prove he was prejudiced by the omission of the accident charge. Accordingly, this allegation is denied and dismissed with prejudice.

Allegations c and d: Related to photos of Applicant smoking marijuana

Applicant argues Counsel failed to object to photographs of Applicant smoking marijuana on the ground that they bore no logical connection to the crime charged. At the evidentiary hearing, Counsel testified that the State tried to prove that Applicant was under the influence of marijuana at the time of Victim's death. Clearly, if the jury believed the State's theory that

Applicant was smoking marijuana on the night Victim died, it could have inferred a "logical connection" between Applicant's intoxication and his mistreatment of Victim. Therefore, Counsel was not deficient for failing to object on this ground.

Applicant also claims Counsel abandoned his cross-examination of the computer expert, Investigator Amick, who testified about the timestamp on the smoking photos. The trial transcript shows that Counsel asked Investigator Amick whether Applicant consented to the search of his phone, and the witness agreed that he did. (Tr. p.390). In closing argument, Counsel used that testimony to argue that Applicant cooperated with the investigation and was not trying to hide anything from law enforcement. (Tr. p.554). Although Counsel did not ask any further questions of the witness, he did effectively use his cross-examination to make a point in closing argument. Counsel also credibly testified, at the evidentiary hearing, that he wanted to move on from the issue of his client's drug use as quickly as possible. He believed that it ultimately did not move the needle, since the most damning evidence against his client was not his marijuana use but the fact that his healthy daughter had sustained fatal injuries while concededly in his care. In addition, on direct examination of Applicant, Counsel successfully brought out Applicant's alternative explanation that the timestamp of the photos had changed when Applicant saved them to a different location on his phone. Therefore, the Court finds Applicant has not proven Counsel's performance was deficient as to this allegation.

In addition, Applicant has failed to present any testimony from Investigator Amick to substantiate his claim that additional cross-examination would have been helpful to the defense. And the smoking photos themselves were merely cumulative to other evidence before the jury of Applicant's marijuana use, including Applicant's own statements to law enforcement and his own

testimony on the stand. Therefore, the Court finds Applicant has not met his burden of proving prejudice either. Accordingly, these allegations are denied and dismissed with prejudice.

III. 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 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 the Application for Post-Conviction Relief be denied and dismissed with prejudice; and

2. The Applicant be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 6 **day of** September **2023.**

EUGENE C. GRIFFITH, JR.
Presiding Judge
Sixteenth Judicial Circuit

York, South Carolina