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STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS)
THIRTEENTH)
JUDICIAL CIRCUIT)
S.C. SUPREME COURT

TIMIYA R. MASSEY, SCDC#322913)

Case No.: 2022-CP-23-2305

Applicant,)

v.)

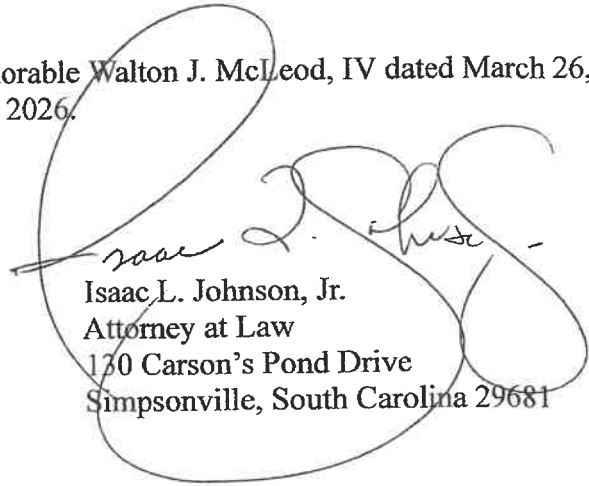
NOTICE OF APPEAL

STATE OF SOUTH CAROLINA,)

Respondent.)
_____)

FILED: 25APR16PM1:26
CLERK OF COURT
SOUTH CAROLINA

Timiya R. Massey appeals the Order of the Honorable Walton J. McLeod, IV dated March 26, 2026. I received a copy of the Order on April 4, 2026.



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Date: April 12, 2026
Simpsonville, South Carolina

their August 2017 term for Murder and Possession of a Weapon During the Commission of a Violent Crime (2016-GS-23-8746)²; Attempted Murder (-8747); Burglary First Degree (-8748); two counts of Attempted Armed Robbery (-3412 & -3413); and Kidnapping (-3414). A jury trial was held on November 6th–8th, 2017, before the Honorable Robin B. Stilwell. Applicant was represented by C. Carlyle Steele, Esquire, and Doug Richardson, Esquire prosecuted the case. The jury found Applicant guilty as indicted and Judge Stilwell sentenced applicant to 40 years for Murder, 5 years for Possession of a Weapon During the Commission of a Violent Crime, 30 years for Attempted Murder, 30 years for Burglary First Degree, 20 years for each count of Attempted Armed Robbery, and 30 years for Kidnapping. Applicant filed a timely notice of appeal.

Chief Appellate Defender Robert Dudek represented Applicant on appeal. By a final brief of appellant filed on April 17, 2019, in the South Carolina Court of Appeals, appellate counsel raised the following issue:

1. Did the court err by “refusing to allow the defense to question alleged accomplice, Nyerere Williams, if he was aware that he could receive a life sentence if he was convicted of murder in this case, since his correct potential sentencing exposure for a crime he was charged with was well settled proper cross-examination where Williams was testifying as a state’s witness against appellant.”

The State filed its final brief in response on April 18, 2019. By an unpublished opinion on January 29, 2020, the Court of Appeals affirmed (Unpublished Opinion No. 2020-UP-020). Appellant filed a petition for rehearing on February 12, 2020. The petition was denied on April 23, 2020. On June 24, 2020, Appellant filed a petition for writ of certiorari in The Supreme Court of South Carolina. The Respondent responded to the petition on July 24, 2020. The Supreme Court

² Although it is unusual to have one indictment number for the crime of Murder and the lesser-included crime of Possession of a Weapon During the Commission of a Violent Crime, after a thorough review of the record, this is an accurate accounting of how the charges were presented to the jury and how the Applicant was convicted.

denied Appellant's petition for writ of certiorari on May 7, 2021. The remittitur was issued on May 12, 2021

CURRENT ACTION

Applicant timely filed this post-conviction relief action on May 3, 2022, alleging:

1. Ineffective Assistance of Counsel.
 - a. "Failure to independently investigate the case."
2. State misconduct and presentation of false evidence.
 - a. "Misconduct by state non-expert forensic analysis; who resigned due to remands of lost evidence."
3. Violation of constitutional rights and amendments
 - a. "Improper chain of custody."
4. After Trial Discovered Evidence
 - a. "All evidence not disclosed at trial that the GSR test was completed."

As relief, Applicant requests that this Court will vacate his sentence or alternatively that his sentence is reversed to match his co-defendant's convictions.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act³ ("the Act") provides that any person who has been convicted of a crime may seek post-conviction relief based upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or other conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint;
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

³ S.C. Code Ann. 17-27-10 to -160 *et seq.*

S.C. Code Ann 17-27-20(A).

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRPC; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel’s conduct “was so [ineffective] as to require reversal” of the applicant’s conviction. *Strickland v. Washington*, 466 U.S. 668 at 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel’s performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel’s deficient performance. *Id.* at 687-88; *Cherry v. State*, 300 S.C. 115, 117—18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that “[without proof of both deficient performance and prejudice to the defense... it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable” (citation and internal quotation marks omitted)).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the

Greenville County Clerk of Court records of the underlying conviction, Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the records from this PCR action. Furthermore, this Court had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. After a careful review based on the *Strickland* standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are the Court's findings of fact and conclusions of law as required by § 17-27-80 of the South Carolina Code (2017).

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." "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 receive 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 Investigate

Applicant alleged counsel was ineffective for failing to investigate. This Court finds this allegation is without merit. In order to prevail upon a claim that counsel did not adequately prepare

or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. *Harris v. State*, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Applicant did not offer any evidence on what Counsel should have further investigated. Applicant thus failed to prove deficiency and prejudice, and this claim is denied.

State Misconduct and Presentation of False Evidence

Applicant alleged there was misconduct by state non-expert forensic analysis who resigned due to remands of lost evidence. This is not a cognizable allegation under post-conviction relief. The allegation is dismissed for failure to state a claim cognizable under the Uniform Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160. An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20(A). However, because an application for post-conviction relief is not a substitute for a direct appeal of trial court error, and because of the modern simplification of criminal jurisdiction jurisprudence in South Carolina, the overwhelming majority of cognizable

claims fall under the broad umbrella of "ineffective assistance of counsel," a contention under the Sixth Amendment to the Constitution of the United States. See *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) ("Allegations of trial court error are not cognizable on PCR.").

Post-conviction relief is not a substitute for an appeal. *Simmons v. State*, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A PCR application cannot assert any issues that could have been raised at trial or on appeal. *Drayton v. Evatt*, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Here, Applicant could have raised this issue during trial and thereafter on appeal. However, Applicant has waived this allegation by failing to raise it at trial or on appeal. Therefore, the allegation is dismissed for failing to state a claim cognizable under the Uniform Post-Conviction Procedure Act.

Furthermore, even assuming this was a cognizable claim, Applicant provided no evidence at the PCR hearing that this witness had done anything incorrectly in *his* case. The witness' prior disciplinary actions were thoroughly brought out and questioned about on cross-examination by trial counsel. (Trial Tr. p. 165 – 167). Therefore, in an ineffective assistance of counsel context, Applicant failed to prove deficiency and prejudice.

Improper Chain of Custody

As an initial matter, this is not a cognizable allegation under post-conviction relief. The allegation is dismissed for failure to state a claim cognizable under the Uniform Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160. An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously

- presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
 6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20(A).

However, as was stated earlier, because an application for post-conviction relief is not a substitute for a direct appeal of trial court error, and because of the modern simplification of criminal jurisdiction jurisprudence in South Carolina, the overwhelming majority of cognizable claims fall under the broad umbrella of "ineffective assistance of counsel," a contention under the Sixth Amendment to the Constitution of the United States. *See Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) ("Allegations of trial court error are not cognizable on PCR.").

Post-conviction relief is not a substitute for an appeal. *Simmons v. State*, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A PCR application cannot assert any issues that could have been raised at trial or on appeal. *Drayton v. Evatt*, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Here, Applicant could have raised this issue during trial and thereafter on appeal. Applicant has waived this allegation by failing to raise it at trial or on appeal. Therefore, the allegation is dismissed for failing to state a claim cognizable under the Uniform Post-Conviction Procedure Act.

Further, Applicant failed to present any evidence, testimony, or legal authority regarding this allegation 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, this Court deems this allegation abandoned.

Newly Discovered Evidence

Applicant alleges newly discovered evidence alleging that not all evidence was disclosed at trial that the GSR test was complete. This Court finds this allegation is without merit. To prevail, Applicant must show the newly-discovered evidence:

1. is such as would probably change the result if a new trial was had;
2. has been discovered since the trial;
3. could not by the exercise of due diligence have been discovered before the trial;
4. is material to the issue of guilt or innocence; and
5. is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983). Applicant provided no evidence that a GSR test was ever completed. The record reflects that no GSR test was done on Applicant because Applicant suffered a gunshot wound and the priority if someone is injured is to provide aid to them and therefore EMS was called and he was transported to the hospital. (Trial Tr. p. 213). The witness further testified that if GSR was taken in this situation, it would not be reliable regardless of whether it was positive or negative because of the environment and the circumstances behind the shooting aspect itself. (Trial Tr. p. 215). Applicant's assertion that a GSR test was completed and not introduced is contradicted by the record, not supported by any evidence at the PCR hearing, and further, not newly discovered evidence. Therefore, this allegation is denied.

ADDITIONAL ALLEGATIONS RAISED AT THE HEARING

Advising Applicant Not to Testify

At the PCR hearing, Applicant alleged counsel was ineffective for advising Applicant not to testify. This Court finds this allegation is without merit.

"The decision to testify or not is a perilous one. If a defendant does not testify, he foregoes

the opportunity to tell the jury his version of events. On the other hand, if a defendant chooses to testify, he subjects himself to cross-examination . . ." *Brown v. State*, 340 S.C. 590, 594, 533 S.E.2d 308, 310 (2000). "If a defendant chooses not to take the stand in his own defense, the trial judge must, if requested, instruct the jury that the defendant's failure to testify cannot be held against him or considered by the jury in any manner during its deliberations." *Id.* "A defendant's decision to testify or not must be made with knowledge of the consequences of either choice." *Id.*

The record reflects that the trial court engaged in a thorough colloquy with Applicant regarding his right to testify. (Trial Tr. p. 379 – 381). The record reflects Applicant told the trial court that he decided not to testify and that it was his decision. *Id.* Further, Applicant testified to his version of events at the PCR court and this Court finds his testimony not credible. Applicant contradicted himself multiple times throughout his version of events and contradicted the physical evidence presented at trial. Applicant has failed to show a reasonable probability that the outcome of the trial would have been different had he testified. *See Cherry supra*. This Court finds Applicant has failed to prove deficiency and prejudice and thus, this claim is denied.

Failing to Impeach Witnesses

Applicant alleged counsel was ineffective for failing to impeach Terry Harris and Nyere Williams on their current and prior charges. This Court notes that the approach and scope of cross-examination should not be second-guessed. *See Sallie v. North Carolina*, 587 F.2d 636, 640 (4th Cir. 1978) (Marzullo not intended to promote judicial second-guessing on questions of strategy as basic as handling of a witness); *see also Dunham v. Travis*, 313 F.3d 724, 732 (2d Cir. 2002) ("Decisions about 'whether to engage in cross-examination, and if so to what extent and in what manner, are . . . strategic in nature' and generally will not support an ineffective assistance claim." (quoting *United States v. Nersesian*, 824 F.2d 1294, 1321 (2d Cir. 1987))); *Johnson v. Hofbauer*,

159 F.Supp.2d 582, 607 (E.D.Mich. 2001) (“Impeachment strategy is a matter of trial tactics, and tactical decisions are not ineffective assistance of counsel simply because in retrospect better tactics may have been available.”) (citing *Gallo v. Kernan*, 933 F.Supp. 878, 881 (N.D.Cal.1996); *aff’d* 141 F.3d 1175 (9th Cir. 1998); *cert. den.* 525 U.S. 856 (1998)).

At the PCR hearing, Doug Richardson the Solicitor testified that he asked these witnesses about their prior charges at trial. At trial both witnesses’ current and prior charges were brought out before the jury by the Solicitor. (Trial Tr. p. 316 – 317, 340 – 341). Further, trial counsel again brought up these witnesses’ charges on cross examination (Trial Tr. p. 329 – 331, 357). The trial transcript directly refutes Applicant’s allegation.

Notably, this Court highlights that Applicant has failed to produce Terry Harris or Nyere Williams for the additional question that Applicant alleges should have been asked during cross-examination. *See Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998). This Court cannot speculate as to how Terry Harris or Nyere Williams would have responded to any additional questions Applicant asserts Trial Counsel should have asked during cross-examination. *See Glover v. State*, 284 S.C. 152, 326 S.E.2d 150 (1985) (Applicant’s mere speculation about what the witnesses’ testimony would have been cannot, by itself, satisfy the applicant’s burden of showing prejudice.) Further, Applicant failed to prove further cross-examination of either witness would have had a reasonable probability of changing the outcome of trial. Therefore, this Court finds Applicant has failed to prove deficiency and prejudice and thus, this claim is denied.

Failure to Object to Hand of One Hand of All

At the PCR hearing, Applicant alleged counsel should have objected to the hand of one hand of all mentioned in the opening statement and the jury instruction itself. Applicant testified that counsel should have objected because he was innocent. Applicant did not provide any actual basis

to object. This Court finds Trial Counsel was not deficient for not objecting to the opening statement nor the proper jury instruction. Further, this Court finds that any objection would have been non-meritorious. *See Miller v. Keeney*, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs); *U.S. ex rel. Link v. Lane*, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence). This Court finds 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 the right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRPC, 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 MARCH, 2026.



WALTON J. MCLEOD, IV
Presiding Judge
Thirteenth Judicial Circuit


_____, South Carolina