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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas
The Honorable Edward Miller, PCR Action Judge
2019-CP-45-00296

BRITTANY EPPS, #369462,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Brittany Epps appeals the denial of her post-conviction relief application. The post-conviction relief action was heard and denied by the Honorable Edward Miller, circuit court judge, on October 31, 2022, and was denied by written order issued filed on June 26, 2026. Applicant received notice of the judgement on June 30, 2026.

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IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Case No.: 2019-CP-45-00296

v.

State of South Carolina,)
Respondent.)

ORDER OF DISMISSAL 10003 10 XERO

This matter comes before this Court by way of Applicant's post-conviction relief application filed May 15, 2019. Respondent made its return on September 10, 2019, requesting an evidentiary hearing be convened. An evidentiary hearing was held on October 31, 2022, at the Sumter County Courthouse. James Falk, Esquire, represented Applicant. Assistant Attorney General Zachary Jones represented Respondent.

Deborah Butcher, Esquire (“Counsel”), also testified. After reviewing all records and evidence before this Court, this Court finds Applicant cannot meet her requisite burden of proof of establishing she is entitled to post-conviction relief and denies and dismisses this application with prejudice. Findings of fact and conclusions of law are set forth below.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. In August 2014, the Williamsburg County Grand Jury indicted Applicant for murder and possession of a firearm during the commission of a violent crime (2014-GS-45-0159).

On March 28, 2016, Applicant proceeded to a jury trial before the Honorable Howard King, circuit court judge. Counsel represented Applicant. Assistant Solicitors Kimberly Barr and Julie Swilley, Esquires, prosecuted the case. The jury was hung and Judge King declared a

mistrial accordingly.

On July 26, 2016, Applicant proceeded to trial before Judge King, and a jury. Counsel represented Applicant at trial and Barr prosecuted the case. Applicant was found guilty as indicted and sentencing was deferred upon consent of the parties, due to Applicant's age.

On August 24, 2016, Applicant appeared before Judge King for sentencing. After thoroughly considering the factors addressed in *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014), Judge King sentenced Applicant to a forty-five-year sentence for murder and a concurrent five-year sentence for the weapons offense.

Applicant filed a timely notice of appeal that was perfected by Appellate Defender Susan Hackett, Esquire. The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion. *State v. Epps*, Op. No. 2018-UP-415 (S.C. Ct. App. Filed Nov. 7, 2018). The Remittitur was issued on November 28, 2018.

Summary of Relevant Facts

Jessica Jackson ("Jackson") participated in the murder of Joseph Brown with her girlfriend, Applicant, and Jackson was the State's primary witness. Jackson and Applicant met in February of 2013 at a group home where they both lived. (Trial Tr. 160-161.) Although Jackson was from Myrtle Beach, she traveled back to Williamsburg County to see Applicant. (Trial Tr. 161.) She eventually moved to Williamsburg County to live with Applicant at a friend's house. (Trial Tr. 164.) The friend, Theo McKnight, was in his forties and lived in a four bedroom home with no running water and plywood on the floor. (Trial Tr. 165 – 169.) Neither Applicant nor Jackson was employed, and they relied on family for food. (Trial Tr. 169-170.)

Jessica said the women first met Joseph Brown ("Victim") at the Sonoco gas station. (Trial Tr. 172.) Applicant's aunt had given them a ride, and the women saw Victim in his Cadillac, parked

at the station. (Trial Tr. 173.) Applicant approached Victim and asked him where she could “get a good grill.” (Trial Tr. 174.) Jackson testified Victim asked Applicant if he could have sex with Jackson for money, and Applicant said no. (Trial Tr. 175.) Victim told Applicant if they changed their minds, they could come to his home. (Trial Tr. 175.) Later, when the women returned to McKnight’s house, they discussed tying up Victim and robbing him. (Trial Tr. 177.)

The women did not see Victim until two weeks later. (Trial Tr. 178.) On the day of the shooting, Applicant told Jackson she felt “like being bad” and then described her plan to rob Victim. (Trial Tr. 188.) When Jackson asked how Applicant planned to rob Victim, Applicant said they could overpower him because of his age. (Trial Tr. 189.)

The women walked to the store to get something to eat and drink and then walked to the building where Victim lived. (Trial Tr. 190.) When they arrived, Victim was sitting outside in his chair. (Trial Tr. 191.) The women sat outside with him and talked. Applicant reassured Jackson that “she had this.” (Trial Tr. 191.) Victim told the women he had to drive a friend to the store, and he allowed the women to stay in his apartment until he came back. (Trial Tr. 192.) While he was gone, the women looked through his belongings to find anything of value to steal. (Trial Tr. 192.) Jackson stole a pack of T-shirts and a pocketknife. (Trial Tr. 192.)

When Victim returned, his nephew was with him. (Trial Tr. 197.) Applicant and the nephew, Arthur Gamble, discussed the engine in Victim’s Cadillac. The conversation also turned to Victim’s ability to take care of himself in spite of his age and the crime in the area. (Trial Tr. 197.) To prove he could take care of himself, Victim pulled a gun from his pocket to show the women. (Trial Tr. 197.)

The women agreed to go with Victim to a cookout at his nephew’s house. (Trial Tr. 200.) Victim placed his gun in the glove compartment of the car and drove the women in his Cadillac.

(Trial Tr. 231.) Jackson had second thoughts about robbing Victim after seeing his gun and agreeing to go to the cookout. (Trial Tr. 202-203.) The trio stayed at the cookout for approximately two hours before they left together. (Trial Tr. 203.) As they were leaving, the women got into the car while Victim remained outside and spoke to his family members. At this point, Applicant told Jackson she planned to shoot Victim. (Trial Tr. 204-205.) Applicant wanted to kill Victim to steal his gun and his car. (Trial Tr. 207.) The plan was for Jackson to cut the straps off of her purse, wrap them around Victim's neck to "be a distraction," and then Applicant would take the gun from the glove compartment and shoot him. (Trial Tr. 207-208.) The women decided they would lead Victim to a deserted area, and then when Applicant used the code words "take off," Jackson would strangle him with her purse straps. (Trial Tr. 209.)

Applicant told Victim to drive down a dark road to drop them off, claiming it was where they lived. Victim became suspicious and started to get agitated. (Trial Tr. 212-213.) As he approached the driveway of an abandoned mobile home, Applicant used the code words and Jackson put the purse straps around Victim's neck. (Trial Tr. 213-215.) Because her hands were sweaty, Jackson let go of the straps, and then Victim and Applicant both struggled to get the gun. (Trial Tr. 215.) In the struggle for the gun, Applicant accidentally shot Jackson in the thumb. (Trial Tr. 215-216.) Jackson saw that the car was going to crash into the woods, so she jumped out of the car. (Trial Tr. 216.) Jackson thought she heard two more shots. (Trial Tr. 216.)

Once Jackson realized she was shot she began panicking. (Trial Tr. 220-221.) Applicant got out of the car and walked to the other side of the field near where the car crashed. (Trial Tr. 221.) Applicant was angry with Jackson for panicking and called her derogatory names. (Trial Tr. 222.) When they finally turned their attention to Victim, the women realized he was still alive, so Applicant shot him again. (Trial Tr. 222-223.) Applicant told Jackson she needed help putting the

body in the trunk. Jackson protested at first but then helped her move Victim from the driver's side to the trunk of the Cadillac. (Trial Tr. 222-223.) The plan was to take his body to Applicant's grandmother's property and throw his body into the swamp. (Trial Tr. 233.) At some point during the commotion, Jackson took the gun from Applicant and put it back in the glove compartment. (Trial Tr. 242.)

The women realized the Cadillac was bogged down in the mud, so Applicant went into the abandoned mobile home and found two pieces of wood to wedge under the tires. (Trial Tr. 231 - 232.) They were unsuccessful in moving the car. (Trial Tr. 232.) They decided to walk to their neighbors ask for help with pulling the car out of the woods, and also to call 911 for Jackson's finger. (Trial Tr. 234 - 237.)

A neighbor testified Applicant and Jackson knocked on her door late the night of the murder. (Trial Tr. 65.) Applicant told the neighbor she needed to use her phone to call for an ambulance because her friend had been shot in the hand in a hunting accident. (Trial Tr. 66-67.) Applicant told the neighbor they had been on her father's land hunting with antique guns when the accident happened. Because her phone was not working, the neighbor sent the women across the street to another house to ask for a telephone. (Trial Tr. 70-71.)

When Officer Craig Staggers, of the Kingstree Police Department, arrived on the scene, he found two women: Applicant was wearing sweats and Jessica Jackson was wearing athletic shorts, a bra, and had her shirt wrapped around her injured hand. (Trial Tr. 78.) Applicant told Staggers the women were hunting squirrels when Jackson accidentally shot herself in the hand. (Trial Tr. 80.) When Staggers asked Applicant why they did not drive to the hospital, Applicant told him their car was bogged down at Windy's Club. (Trial Tr. 80-81.) Applicant also said she gave the gun back to her uncle. (Trial Tr. 81.) Staggers found the story suspicious because the women had

not driven directly to the hospital and could not produce the gun. (Trial Tr. 84.) EMS arrived and transported Jackson to the hospital shortly after midnight. (Trial Tr. 79.) Applicant told Staggers she would walk to her aunt's house, which was located in a nearby subdivision, and get a ride home from there. (Trial Tr. 89-91.)

Samuel Barr heard a call go out on his police scanner that shots had been fired on Kendall Park Road. (Trial Tr. 98.) Because he was curious, Barr drove out toward Kendall Park Road to see what happened. (Trial Tr. 98.) Across the street from Windy's Club, Barr noticed a car bogged down in the woods. (Trial Tr. 96-101.) As Barr was looking at the car in the woods, Applicant walked up to him and said, "Look what my girlfriend made me do. She made me drive my car in the woods." (Trial Tr. 101.) Barr asked where Applicant's girlfriend was, and Applicant said she was "in the ambulance back up there at the house." (Trial Tr. 104.) Applicant then walked off in the direction of a nearby neighborhood. (Trial Tr. 142.)

Investigator Kennedy responded to the call of the accidental gunshot victim sometime about 12:30 am. (Trial Tr. 351-352.) When he arrived in the neighborhood, the ambulance had taken Jackson to the hospital, and no one was present. (Trial Tr. 352.) One of the earlier responding officers told Kennedy that Applicant mentioned a car being bogged down near Windy's Club, so he drove to the area to investigate. (Trial Tr. 352-353.) Kennedy found the Cadillac stuck in the woods, noticed the car door open, and saw blood on the interior and the trunk. (Trial Tr. 356-359.) The officers attempted to open the trunk but could not. Kennedy arranged to tow the Cadillac to the impound lot for further investigation, while he looked into the whereabouts of the victim. (Trial Tr. 361-362.) One of the deputies found Jackson's purse and identification in the back seat. (Trial Tr. 360.) After talking to the victim's family, Kennedy decided to try the trunk of the car again, and he was able to pry open the trunk enough to see Victim's body inside. (Trial Tr. 365-367.)

On March 31, Kennedy attended a search of the home of Applicant's aunt. (Trial Tr. 374.) In the grassy area in front of the aunt's house, Kennedy noticed a Cadillac key fob on the ground. (Trial Tr. 375.) The key chain and fob had distinctive branding of a former Cadillac dealership and phone number from Arizona. (Trial Tr. 379.)

Arnold Gamble was the victim's nephew and hosted the cookout the day of the shooting. (Trial Tr. 125-126.) Gamble confirmed that at about 3:00 pm that afternoon, Victim left the cookout in his Cadillac and then later returned, driving the same Cadillac, accompanied by Applicant and Jackson. (Trial Tr. 126-129.) The trio stayed at the cookout until approximately 9:30 pm, and Gamble made plans to see his uncle the following morning. (Trial Tr. 129-130.) When they left in the Victim's car, Gamble confirmed Victim was driving, Applicant was in the front passenger seat, and Jackson was in the back seat behind the driver. (Trial Tr. 130-131.) Gamble learned of his uncle's death the next day, when the sheriff's department notified him about finding his body. (Trial Tr. 132-133.)

The State's pathologist testified the only signs of injury to the body of Victim were the gunshot wounds to his head. (Trial Tr. 502-503.) The eighty-seven-year-old victim was five feet, ten inches tall and weighed one hundred seventy-six pounds. (Trial Tr. 504.) One bullet wound indicated the bullet entered the left temple and exited behind the left ear. That wound was not fatal. (Trial Tr. 506-507.) Another gunshot wound entered the bony area above the right eyebrow, traveled through the sinuses and the face and stopped in the left side of Victim's neck. (Trial Tr. 507-508.) The third wound entered on the top of Victim's head, through the brain, and ended in the base of the skull. (Trial Tr. 509.) Victim's toxicology report came back negative for drugs and alcohol. (Trial Tr. 519.)

The purse straps in the rear floorboard of the Cadillac contained the DNA of Jackson and Victim. (Trial Tr. 589-591.) Jackson's DNA was present on the red shorts she was wearing the night of the murder and a plastic bag found in the backseat floorboard of the Cadillac. (Trial Tr. 591-592.) Jackson's DNA was also on the center of the back seat. (Trial Tr. 595-596.) The camouflaged hoodie found on the passenger floorboard of the front seat contained a mixture of DNA from Jackson and Applicant. (Trial Tr. 598-599.)

Jackson first told police she hurt her hand in a hunting accident. (Trial Tr. 246.) She then changed her story and told investigators Victim tried to rape her. (Trial Tr. 246-247.) When the police didn't believe Jackson was able to place the body in the trunk by herself, she then said Applicant was present but had nothing to do with the shooting. (Trial Tr. 247-248.) Not long after her incarceration, she told the officers about their plan to rob and kill Victim. (Trial Tr. 248-250.)

Applicant testified in her own defense at trial. She admitted that she left the cookout with Victim and Jackson in Victim's Cadillac after the cookout, although she claimed Theo McKnight was with them. (Trial Tr. pp.656-57). She also admitted that she accompanied the group to Kendall Park Road near Windy's Club. (Trial Tr. pp.658-59). However, she claimed that she was dropped off at "Ms. Bee store" to get some marijuana; then, while she was walking back on foot along Kendall Park Road, she saw Jackson sitting down in the driveway near a trailer in front of Windy's Club. (Trial Tr. pp.660-61; p.662, lines 5-8). Applicant claimed Jackson's fingers started to bleed, causing them both to panic and start yelling. (Trial Tr.p.661, lines 2-7). Applicant testified that the two women went to a neighbor's house to call an ambulance, and Theo McKnight appeared and started walking with them. (Trial Tr. p.662, lines 13-24). Applicant admitted she lied to police about the gun being with her uncle. (Trial Tr. p.664, lines 8-11). She also claimed

she did not know how Jackson's hand was injured, but she told police it was injured in a hunting accident because that was what Jackson told her to say. (Trial Tr. p.664, lines 15–25). She claimed Theo McKnight was present when she made the 911 call, but he left sometime afterward without her noticing. (Trial Tr. p.669, lines 9–20). She denied making any plans to rob or kill the victim, and she claimed she did not know how he was shot; the last time she saw him was when he dropped her off at Bee's store. (Trial Tr. pp.674–75, p.677, lines 5–7).

The defense then called Theo McKnight, who testified—contrary to Applicant's testimony—that he was home all night on the date Victim was killed. (Trial Tr. pp.821–25). The defense then called Schain McCrae, who testified that he had been incarcerated with Theo McKnight and that McKnight had confessed that he and Jackson had participated in the robbery and killing of Victim after Applicant had been dropped off. (Trial Tr. pp.844–46).

Current Action Before this Court

In her current PCR application, Applicant alleges she is being held in custody unlawfully because of ineffective assistance of counsel in that:

1. Ineffective assistance of counsel
2. Co-defendants statements/testimony invalid
3. Trial court error concerning the jury
 - a. "misinformed"
4. New evidence
 - a. Co-defendant confession

At the PCR hearing, Applicant proceeded forward on the following allegations:

1. Ineffective assistance of counsel for:
 - a. Failure to properly impeach Mark Hatten with his criminal record and to properly preserve this issue on appeal by alleging that failure to admit the record would have constituted a Confrontation Clause violation.
 - b. Failure to properly impeach Theodore McKnight based on his prior record by raising the issue was a Confrontation Clause issue.
 - c. Failure to contemporaneously object to the State mentioning Shae McCrae's felony convictions during cross-examination.
 - d. Failure to object to the State's closing argument when they mentioned

witnesses that they did not call at trial and stated what they would have testified to.

All other allegations raised in her initial application and amendments are deemed waived and abandoned and, accordingly, will not be addressed in this order.

Summary of Counsel's Testimony

Counsel testified that Applicant's case was conflicted out to them from the Public Defender's Office. (PCR Tr. 5). She testified that this case was tried twice because the jury was hung the first time. (PCR Tr. 5). She stated that the State extended a plea offer and that she encouraged Applicant to take it because the State would correct their mistakes before proceeding to the second trial. (PCR Tr. 6).

She testified that she did not remember Mark Hatten's role in the case and did not remember impeaching him with his prior record. (PCR Tr. 6). Upon reviewing the trial transcript, she testified that he was the prior owner of the vehicle. (PCR Tr. 7). She testified that she did not remember that he had a pending malicious injury to property charge but saw that she asked him about the charge upon reviewing the transcript. (PCR Tr. 7). She testified that the malicious injury charge did not qualify because it was a magistrate level offense. (PCR Tr. 9). She stated that she argued that when the State objection based on relevance, she argued that she was trying to establish bias. (PCR Tr. 8). She stated that she did not base her argument on the violation of the Confrontation Clause in Applicant's case. (PCR Tr. 8). She stated that she would defer to the record regarding the question of whether she properly preserved an allegation of the violation of the Confrontation Clause on appeal. (PCR Tr. 9).

Counsel was questioned regarding the fact that Theodore McKnight had a pending murder charge. She testified that he provided proffer testimony but did not remember anything and the Court ruled that the pending murder charge was not probative enough. (PCR Tr. 9). She

deferred to the record when asked if she raised a Confrontation Clause issue. (PCR Tr. 10).

Counsel did not contemporaneously object to the State raising Shae McCrae's felony convictions during cross-examination, though she testified that she brought this objection up to the Court beforehand. (PCR Tr. 10-11).

Counsel testified that she did not object to the Solicitor's closing when the prosecutor mentioned witnesses they could have called and what they would have said. (PCR Tr. 11-12). She testified that she does not object during opening and closing arguments "unless I think it's really hurting the case" because it is not professional and because the jury does not respond well to a flurry of objections and comes to believe that you are hiding things. (PCR Tr. 12). She stated that she did not think the State's comments would hurt the defense. (PCR Tr. 12).

Counsel testified that the State did not call Mark Hatten, the prior owner of the Victim's Cadillac, to identify the key fob and chain at the first trial, which Counsel believed contributed to the jury being hung. (PCR Tr. 13). She stated that she told Applicant that this would be corrected at the second trial, which it was. (PCR Tr. 13). She stated that he identified the key, which solidified the jury's finding that Applicant was there that night. (PCR Tr. 13).

On cross-examination, Counsel testified that the Cadillac was owned by the victim and that Applicant was in possession of the key fob and chain. (PCR Tr. 14). She stated that the State could not connect the key fob and the car at the first trial, but that this was corrected at the second trial through bringing on the prior owner of the car to identify the fob and key ring. (PCR Tr. 14). Counsel testified that Mr. Hatten had brought documents proving his prior ownership of the Cadillac, and she did not believe that questioning Mr. Hatten about his pending magistrate level offense would call into question the validity of those documents. (PCR Tr. 15). Counsel also explained that the trial court sustained the State's objection to bringing up Mr. Hatten's

pending charge when Counsel attempted to do so. (PCR Tr. 16).

Counsel testified that she initially objected to Mr. McCrae's felony convictions being used to impeach him and she renewed all objections in the case towards the end of the trial. (PCR Tr. 17). She also testified that she did not recall if she argued in closing that Officer Ballard failed to testify at trial but rested on the record. (PCR Tr. 17).

Counsel did not recall the DNA evidence from the trial; however, on reviewing the transcript, she testified that DNA found on some clothing matched Applicant and her co-defendant. (PCR Tr. 17-18). She testified that Applicant claimed Theo McKnight was at the crime scene that night, but his testimony was different. (PCR Tr. 18-19). Counsel attempted to impeach him on this point at trial. (PCR Tr. 19).

On redirect, she testified that McKnight denied discussing the case with McCrae when in jail. (PCR Tr. 20). She testified that he denied involvement in the crime when on the stand. (PCR Tr. 20). She testified that he was called because Applicant was insistent on calling him to establish that he was present and knew she was dropped off at a store prior to the robbery. (PCR Tr. 20-21).

Findings of Fact and Conclusions of Law

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. Before this Court are the Williamsburg County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the mistrial, trial, and sentencing transcripts, direct appeal records, and this PCR action's records. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by South Carolina

Code Annotated Section 17-27-80 (2003).

Ineffective Assistance of Counsel

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show “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. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel’s performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel’s actions fell outside of the zone of “reasonableness under prevailing professional norms.” *Strickland*, 466 U.S. at 688. *See also* Rule 71.1(e), SCRPC (“The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence.”). Reasonableness is determined by the “variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant,” and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel’s performance remains highly deferential towards defense counsel with a strong

presumption that counsel acted competently, because competent representation may be executed in virtually “countless” ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel’s deficient performance must have prejudiced the applicant so 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. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. For a reviewing court to find prejudice, “[t]he likelihood of a different result must be substantial, not just conceivable.” *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

Mark Hatten

Counsel was not constitutionally ineffective for failure to raise the Court’s decision to exclude Hatten’s criminal history from being entered into evidence as a Confrontation Clause violation or for failing to preserve this issue on appeal. The record shows that Counsel did attempt to impeach Hatten with his pending charges, but the trial court ruled that the charges were inadmissible because their probative value was substantially outweighed by their prejudicial effect. (Trial Tr. p.313–p.318). Regardless of what basis Counsel sought to enter the

impeachable evidence under, she still needed to establish relevance; something Counsel was unable to do. Counsel attempted to bring this information up at trial. Thus, the issue is not whether this was addressed by Counsel but rather that the Court did not rule in Applicant's favor. Failure to procure a favorable ruling from the Court does not render Counsel deficient. Further, there has been no showing that Applicant was prejudiced even if this Court were to find Counsel deficient. As the trial court correctly noted, Hatten's testimony that he had previously owned the car and could identify the key fob was corroborated by the paperwork proving his prior ownership and by the identifiable features of the key fob itself. Thus, relief is denied on this ground.

Theodore McKnight

Counsel was not constitutionally ineffective for failure to raise the Court's decision to exclude McKnight's pending murder charge from being entered into evidence as a Confrontation Clause violation. The trial transcript clearly reflects that Counsel attempted to bring up this charge for impeachment purposes, but the Court ruled that it was inadmissible. (Trial Tr. 639). This charge was not admissible pursuant to Rule 609, SCRE, which concerns only proof of a prior *conviction*.

In addition, it must be remembered that McKnight was called as a witness by the *defense*, not by the prosecution. Of course, a party may impeach its own witness under Rule 607, SCRE, and the trial court in fact permitted Counsel to impeach McKnight through the testimony of Schain McCrae. Counsel was able to call McCrae and to question him extensively about a purported jailhouse confession made by Theo McKnight while the two of them were incarcerated together. This not only allowed Counsel to argue that McKnight had previously confessed to his involvement in the crime, but it also necessarily implied that McKnight had been arrested and

incarcerated, which made the fact that he had a pending charge for murder much less probative than it would have been if there had been no evidence of McKnight's incarceration. To the extent Counsel wanted to establish that McKnight had a potential motive to testify against Applicant due to his incarceration, McCrae's testimony would have been sufficient to support such an inference. The evidence of McKnight's pending charge would be mostly cumulative to McCrae's testimony.

The only additional effect from specifying the nature of McKnight's pending charge would be to show the jury that he had been charged with an unrelated murder. This would have been highly prejudicial, since Applicant's position was that McKnight participated in the murder of Victim; evidence that McKnight was arrested for a different murder would have had a strong tendency to act as propensity character evidence, which is inadmissible. *State v. Robinson*, 438 S.C. 421, 435, 882 S.E.2d 883, 891 (Ct. App. 2023). It is highly likely that the trial court would have determined that the prejudicial effect of this evidence would have substantially outweighed its marginal probative value.

Regardless of what ground Counsel might have raised to argue that this evidence should come in, this Court finds it is not reasonably likely that the evidence would have been admissible. Accordingly, the Court finds Counsel was not deficient, nor was Applicant prejudiced. Thus, relief is denied on this ground.

McCrae

Applicant has failed to establish that Counsel was constitutionally ineffective for failure to renew their objection to the State's mention of Mr. McCrae's prior criminal history on cross-examination. Counsel acknowledged at the PCR hearing that they initially objected to entry of criminal history but failed to renew this objection so it could be properly preserved on appeal.

Applicant has failed to establish how, if Counsel had renewed this objection at trial, the Court's decision would have been different from its initial decision on the matter or how the appellate court would have decided this matter in a way favorable to Applicant. It should be noted that McCrae was impeached with a prior *conviction*, not merely a pending charge, and that there was never any argument that McCrae "acted in conformity with" any of his convictions which would suggest impermissible propensity character evidence. Accordingly, this Court finds it is not likely that merely renewing the same objection would have caused the trial court to change its decision, nor would the court of appeals be likely to reverse it on appeal under the deferential abuse of discretion standard. Applicant has failed to establish prejudice and relief is denied accordingly.

Closing Argument

Counsel was not constitutionally ineffective for failure to object to the State's closing argument. Specifically, the prosecutor argued in closing:

Yeah, I didn't call Juan Ballard. Guess what? I didn't call about 10, 15 different people that I could. I guess I could have called, had every EMS worker who came out there, could have had the firefighter come out here, put Ballard up, could have put all the SLED agents who were involved. Now we'd be here till next month or the month after; but yeah, I could have done that. And guess what, folks, you wouldn't know no more than a month down the road than you know right now. You'd just have 10, 15 different people saying the same thing. So I don't want you to buy that whole notion 'cause it's easy to just try to, you know throw stuff out there. It's a trick that we like to do with folks. We don't want you focused right here on the truth so we tell you, oh, we throw a little rock over there, look over there. That's what the Defense is doing to you today.

Tr. 905-906.

This argument appears to be a response to Counsel's earlier argument criticizing the State for failing to call Officer Juan Ballard as a witness: "Did you notice Officer Ballard? We didn't hear from him. He'd been the one that was the lead investigator up until about three months ago,

never heard from him, wasn't on the stand." (Tr. p.887, lines 12-16).

In response to Counsel's argument, the prosecutor was entitled to argue that she chose not to call Officer Ballard for the same reason she omitted to call every other investigator, EMS worker, firefighter, and SLED agent remotely involved in the case: calling so many witnesses would unreasonably prolong the trial. The prosecutor was also entitled to argue that Counsel's criticism of the State for failing to call Officer Ballard was nothing more than a distraction from the substantive evidence presented in the case. On those two points, the prosecutor's argument was permissible.

However, the prosecutor arguably strayed outside the bounds of proper argument when she claimed those additional witnesses would all "say[] the same thing" the jury had already heard from the law enforcement officers who actually testified. This statement arguably could be interpreted as improperly vouching, to the extent it implied that the prosecutor knew of evidence not presented to the jury that would have corroborated the testimony of the investigators who actually did take the stand.

Nevertheless, this Court finds Counsel was not deficient for failing to object. Counsel credibly testified that she generally does not object during opening and closing arguments unless she thinks a remark was really damaging to the defense because it appears unprofessional and because the jury does not respond well to numerous objections and comes to believe that you are hiding things. (PCR Tr. 12). She stated that she did not think the State's comments hurt the defense. (PCR Tr. 12).

This Court agrees with Counsel's appraisal of the challenged comments. The prosecutor merely mentioned that she could have called duplicative witnesses that would not have produced any new evidence or, frankly, played any meaningful role in the State's case. Although

prosecutors should generally avoid comments to the jury concerning what an absent State's witness purportedly would have said, the possibility of prejudice is insignificant when, as in this case, the prosecutor merely assures the jury that those absent witnesses would have given irrelevant or cumulative testimony and would not have substantially supported the State's case. In other words, while it would be highly problematic for a prosecutor to ask the jury to consider evidence that was not presented at trial, it is far less damaging for the prosecutor to tell the jury *not* to consider such evidence, which is clearly what the prosecutor was trying to convey in this case. Furthermore, insofar as the prosecutor's comment could be interpreted as vouching for the law enforcement witnesses who testified at trial, there can be no prejudice because the substance of those law enforcement witnesses' testimony was not seriously disputed. Thus, this Court finds that an objection likely would not have been sustained, Counsel was reasonable in deciding not to object, and this alleged failure had no prejudicial impact. Thus, relief is denied on this ground.

[conclusion and signature on following page]

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 her application. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court notifies the Applicant that she must file and serve a notice of appeal within thirty days of receipt by counsel of the judgment entry's written notice to secure appropriate appellate review. *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 appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the 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 South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

IT IS THEREFORE ORDERED:

1. The PCR application be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 19 day of June, 2026.



EDWARD MILLER
Presiding Judge
Third Judicial Circuit

Greenville, South Carolina.

FILED
2026 JUN 19 PM 4:00
CLERK OF COURT
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