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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable Jessica Salvini, PCR Action Judge
2019-CP-40-04618

WAYLAND PURNELL, #360617,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Wayland Purnell appeals the denial of his post-conviction relief application. The post-conviction relief action was heard and denied by the Honorable Jessica Salvini, circuit court judge, on June 2, 2025, and was denied by written order issued filed on July 22, 2026. Applicant received notice of the judgement on July 23, 2026.

/s Chelsey F. Marto
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STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Wayland Purnell, #360617,)
Applicant,)
)

Case No.: 2019-CP-40-04618

v.)

ORDER OF DISMISSAL

State of South Carolina,)
Respondent.)
_____)

RICHLAND COUNTY
FILED
2025 JUL 22 P 2:12
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

This matter comes before this Court by way of Applicant's post-conviction relief application filed August 21, 2019. Respondent made its return on February 4, 2020, requesting an evidentiary hearing be convened. An evidentiary hearing was held on June 2, 2025, at the Richland County Courthouse. Chelsey F. Marto, Esquire, represented Applicant. Senior Assistant Deputy Attorney General D. Russell Barlow represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Counsel J. Taylor Bell also testified. After reviewing all records and evidence before this 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. 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 Richland County Clerk of Court. In October 2012 the Richland County Grand Jury indicted Applicant for first-degree criminal sexual conduct with a minor (2012-GS-40-5044). He was indicted in February 2014 by the Richland County Grand Jury for lewd act upon a child (2014-GS-40-1247). J. Taylor Bell, Esquire represented Applicant. On July 7-10, 2014, Applicant proceeded to trial before the Honorable Clifton Newman, circuit court

judge, and a jury. Applicant was found guilty as indicted and Judge Newman sentenced him to twenty-five years' imprisonment for first-degree CSC with a minor and fifteen years for lewd act upon a child.

Applicant filed a timely notice of appeal that was perfected by Lara Caudy, Esquire, who filed a merits brief raising the following issues:

1. Whether the trial judge erred in qualifying Dr. Allison Foster as an expert in child sex abuse dynamics and finding that the subject matter of her testimony was sufficiently reliable and outside the realm of a lay juror;
2. Whether the trial judge erred in determining that the expert testimony was necessary and did not improperly bolstered the victims' credibility.

The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion. *State v. Purnell*, Op. No. 2017-UP-272 (S.C. App. Filed July 5, 2017). Thereafter, Applicant petitioned for a writ of certiorari, which was granted on March 28, 2018. However, after briefing and oral argument, the writ was dismissed as improvidently granted. *State v. Purnell*, Op. No. 2019-MO-032 (S.C. Sup. Ct. filed July 24, 2019). The remittitur was issued on July 24, 2019.

Summary of Relevant Facts

Applicant began dating the victims' mother in 2010. (Trial Tr. 139). They married on March 18, 2011, after which Applicant moved into the victims' mother's New Jersey residence where several of her children were living before they all relocated to South Carolina (Trial Tr. 137, 139–141).

On April 30, 2012, Victim 1 made a concerning disclosure at an after-school reading club, stating she “knew what a man’s private was” (Trial Tr. 118, 120). Danielle Jackson, a mother of a kid disclosed to, immediately contacted Victims’ mother, who came to Jackson’s home and spoke with Victim 1 (Trial Tr. 121, 124, 127). After returning home, Victims’ mother

spoke with Victim 1 and Victim 2, both of whom confirmed sexual abuse (Trial Tr. 147). Victims' mother contacted police within approximately thirty minutes (Trial Tr. 147–148).

Officer David Rogers responded to the home to investigate a sexual assault (Trial Tr.132). Investigator Barbara Coleman also responded and instructed Victims' mother not to further interview the children, referring them to the Assessment Resource Center (ARC) for forensic and medical evaluations (Trial Tr. 238–239).

Applicant arrived at the residence while investigators were present and agreed to accompany officers to police headquarters (Trial Tr. 133). Applicant stated he needed to travel to Delaware due to his father's health. Investigators permitted the travel so long as Applicant checked in weekly (Trial Tr. 242).

On May 22, 2012, Victim 1 was interviewed by Dr. Alicia Benedetto and Victim 2 by Ray Olszewski at ARC (Trial Tr. 257–258, 308). The forensic interviews were played for the jury (Trial Tr. 264, 309).

Victim 1, age eleven at trial, testified that Applicant touched her "private part" with his "private part," and touched her "butt" with his "private part" (Trial Tr. 184–185). She described a specific incident in South Carolina where Applicant forced her to pull down her pants and "put his private part into my butt" (Trial Tr. 186). She also recalled an attempted anal penetration in New Jersey (Trial Tr. 186). Applicant told her not to tell anyone (Trial Tr. 189). Victim 1 also witnessed Applicant sexually assault Victim 2 (Trial Tr.188).

Victim 2, age ten at trial, identified male and female genitals as "the middle part" (Trial Tr.203–204). She testified that Applicant "sticks his middle part in my behind" (Trial Tr.205). She described one incident in New Jersey and multiple incidents in South Carolina (Trial Tr. 205). She recounted Applicant pulling down her pants and penetrating her anus (Trial Tr. 207).

She also described an incident where Applicant tickled her and Victim 1 before pulling her pants down and penetrating her (Trial Tr. 208). Applicant told her not to tell anyone, and she feared he would harm them (Trial Tr. 208).

Dr. Susan Luberoft, ARC pediatrician, examined both victims on May 22, 2012, and found no genital or anal injuries (Trial Tr. 221, 224–225). She testified that injuries are rare because abusers often avoid causing pain and because the anus heals quickly, especially given delayed disclosure (Trial Tr. 225).

After reviewing the ARC interviews, Investigator Coleman contacted Applicant, who stated his father's health had improved and he wished to return to South Carolina (Trial Tr. 242). Upon his return, Coleman transported Applicant to the police station and arrested him (Trial Tr. 243).

The jury convicted Applicant of lewd act upon a child as to Victim 2 and CSC 1st as to Victim 1 and acquitted him of CSC 1st as to Victim 2 (Trial Tr. 430–431).

Current Action Before this Court

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

1. Ineffective assistance of counsel for:
 - a. No witness or case was presented on Applicant's behalf.
 - b. No DNA or physical damage to victims nor was there a rape kit or testimony from doctors or physical abuse.
 - c. Violation of Applicant's right to a speedy trial due to Applicant being incarcerated two years before seeing a courtroom.

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

1. Ineffective assistance of counsel for:
 - a. Failure to present a proper defense and call defense witness.
 - b. Failure to investigate physical evidence
 - c. Failure to argue that there was no physical evidence presented, and no DNA/serology evidence found in closing argument.

- d. Failure to cross-examine witnesses regarding lack of physical evidence
 - e. Failure to meet with Applicant enough.
 - f. Failure to discuss charges and defenses.
 - g. Failure to correctly explain burden of proof and reasonable doubt to the jury.
 - h. Failure to contemporaneously move for a mistrial and object to the Court's curative instruction when the witness mentioned applicant was incarcerated before.
 - i. Failure to request a mistrial when a juror walked into the courtroom at the wrong time.
 - j. Failure to properly cross-examine victims.
 - k. Failure to properly preserve objections to the State's closing argument for appellate review.
 - l. For erroneously advising Applicant not to testify.
 - m. Failure to cross-examine Applicant's ex-wife concerning their relationship status and jealousy issues.
 - n. Failure to develop a full defense at trial.
 - o. Failure to secure a plea offer.
2. Malicious prosecution due to a recorded jail call between Applicant and his father.

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

Summary of the Testimony

Applicant Testimony

Applicant testified that he was charged with sex crimes against two alleged victims and went to trial, where he was convicted of CSC with a minor and lewd act upon a minor. (PCR Tr. 5-6). Applicant stated that he was represented by Counsel, who he felt did not represent him adequately. (PCR Tr. 6). He stated that his prior counsel passed away and Counsel took over representation about two years in. (PCR Tr. 6).

He stated that he met with Counsel three to five meetings where they discussed the case, sentencing exposure, trial, and bond. (PCR Tr. 6). He stated that they discussed the charges and trial strategy but did not discuss the elements of the charges. (PCR Tr. 7, 15). He stated that Counsel said he did not want to "go hard examining witnesses". (PCR Tr. 7). He stated that he agreed with that decision to a degree but wanted the victims' mother and the victims themselves

to be more aggressively cross-examined about how Applicant's relationship with the victims' mother was deteriorating at the time the allegations came about. (PCR Tr. 7-8).

Applicant testified that he wanted Tasura Thompson subpoenaed to go to court but she was not called to testify in part because she was running from a warrant herself. (PCR Tr. 8). He stated that Counsel moved for a continuance to secure her presence but wanted Counsel to formally subpoena her. (PCR Tr. 8).

Applicant testified that he felt like Counsel did not develop a full defense at trial, specifically in pointing out the difficulties in his relationship at the time of the allegations. (PCR Tr. 8-9). Applicant testified that he was advised against testifying but thought his testimony about the deteriorating relationship would have been helpful. (PCR Tr. 9). He also testified that he wanted Counsel to clarify to the jury why he went to his dad's house immediately after being accused. (PCR Tr. 14).

Applicant testified that he wanted the victims thoroughly cross-examined about the identity of the perpetrator, when the alleged assaults occurred, and how many times. (PCR Tr. 16).

Applicant stated that there was no physical evidence of sexual assault and that he thought Counsel should have investigated this further and raised it in closing arguments. (PCR Tr. 9). He also wanted witnesses cross-examined about the lack of physical evidence. (PCR Tr. 10).

Applicant testified that a juror walked in the room when he should not have. (PCR Tr. 10). He stated that Counsel objected long after it happened, but he wanted Counsel to move for a mistrial. (PCR Tr. 10). He did acknowledge that the juror was disqualified but said it was after the juror returned to the rest of the jurors. (PCR Tr. 19-20). He stated that he also wanted Counsel to move for a mistrial when there was mention of Applicant being previously

incarcerated. (PCR Tr. 10-11). He stated that he did not want the Court to issue the curative instruction that was given. (PCR Tr. 11).

Applicant testified that he did not remember Counsel raising multiple objections during closing argument when the State offered their closing argument. (PCR Tr. 11). He stated that he wanted whatever objections Counsel raised to be placed on the record so they could be preserved on appeal. (PCR Tr. 11-12).

Applicant testified that he thought that Counsel's explanation of the burden of proof and reasonable doubt was improper and he could have done a better job in opening statement in that regard. (PCR Tr. 12).

Applicant voiced discontentment regarding the fact that he never got a plea offer. (PCR Tr. 13). He stated that he never knew about the plea offer involving two counts of lewd act each receiving an eight-year sentence run consecutively. (PCR Tr. 13). He stated that he would not have pled because he was innocent. (PCR Tr. 13).

Applicant testified that he knew phone calls were recorded but that he believed that the Solicitor heard the call and became hostile towards Applicant during the remainder of his trial. (PCR Tr. 21). He stated that he was then offered two forty-five-year sentences to be run consecutive. (PCR Tr. 21-22).

Counsel Testimony

Counsel testified that he practiced law for fifteen years and that most of his cases are criminal. (PCR Tr. 36). Counsel testified that he represented Applicant for over a year prior to trial. (PCR Tr. 23). He stated that there was a rule requiring public defenders to meet with their clients at least once every sixty days, which Counsel abided by. (PCR Tr. 24). Thus, Counsel believed he met with Applicant between ten and twenty times. (PCR. Tr. 24). He stated that they

discussed the discovery, the evidence, expert witnesses, expert reports, counseling records, a sexual assault examination report, potential witnesses, plea offers, charges, sentencing ranges. (PCR Tr. 25).

Counsel testified that he did not recall being offered two consecutive eight-year sentence offers but that that sounded like a reasonable offer that that specific prosecutor would have made. (PCR Tr. 25-26). Counsel testified that there was no physical evidence in the case but that the State did not need any physical evidence to prosecute. (PCR Tr. 26). Counsel testified that he cross-examined the pediatrician who admitted she was not a proctologist or gynecologist to the point where the judge seemed mad at Counsel. (PCR Tr. 26). Counsel testified that experts could testify that if there is an injury that is a sign of assault but if there is no injury they can testify that that part of the body heals quickly. (PCR Tr. 27).

Counsel testified that Applicant informed him that his relationship with the victim's mother was rocky when the assault allegations happened. (PCR Tr. 28). Counsel testified that his focus on cross-examining the mother was regarding how she spoke with someone in another state instead of tending to her children right after the assault disclosure. (PCR Tr. 28).

He also stated that he contacted Tashera Thompson who was going to appear before the case was continued. (PCR Tr. 28). He stated that thereafter she made derogatory comments towards Applicant concerning pedophilia that would not have gone well at trial. (PCR Tr. 28).

Counsel testified that he made a strategic decision to have his female co-counsel to cross-examine the victims; which he thought worked out well given the fact that Applicant was found not guilty on one charge. (PCR Tr. 29). He stated that he did not think further cross-examining the victims would have helped. (PCR Tr. 30).

Counsel testified that he discussed with Applicant the right to testify, including Applicant

that had the right to testify and make the decision himself. (PCR Tr. 30-31). Counsel testified that Applicant elected not to testify and that Counsel did not think testifying would benefit Applicant because all he could have done was deny the allegations. (PCR Tr. 31).

He testified that co-counsel gave the defense's opening statement. (PCR Tr. 31). He also testified to making a couple objections during the State's closing argument. (PCR Tr. 31). Counsel testified that he could not put the reason for the objections on the record because the judge was hostile throughout the trial and explicitly told Counsel not to explain it unless instructed. (PCR Tr. 31-32).

Counsel testified that he did not recall if he asked for a mistrial when a witness stated that Applicant was previously incarcerated but recalled objecting. (PCR Tr. 33). He stated his actions were contingent on how the judge was responding to him. (PCR Tr. 33). He stated he did not recall if he objected to the curative instruction and agreed that a curative instruction can sometimes draw more attention to the issue. (PCR Tr. 33). He stated that he may have asked Applicant if he wanted a curative instruction and stated that he wanted to get the case over with and that it had been continued once before for failure to turn over an expert report or disclose an expert timely. (PCR Tr. 33-34). He stated that he did not believe he moved for a mistrial because Applicant did not want his trial continued again and the judge would not have granted the motion. (PCR Tr. 37). Counsel did not recall a juror walking into the courtroom at the wrong time. (PCR Tr. 38).

Counsel testified that he did not recall discussions with Applicant and his father on recorded jail calls and he never had that conversation but makes it a point to tell clients not to speak on the phone and that they are recorded. (PCR Tr. 34). Counsel testified that he did not think that the State was unduly aggressive towards him nor did she treat him differently than she

would treat anyone else she was prosecuting. (PCR Tr. 35).

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 Richland County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the trial transcript, direct appeal records, the PCR transcript, 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), SCRCP (“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. Realistically, this matters “only in the rarest case” because “[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.

Failure to meet with Applicant enough and to discuss the charges

Applicant claims Counsel was constitutionally ineffective for failure to meet with Applicant enough and to discuss the charges. “[B]revity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation.” *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (2012). Applicant must show evidence indicating “how additional preparation or communication would have resulted in a different outcome.” *Id.* See *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (where application failed to show ineffective assistance of counsel based on lack of preparation by neglecting to show evidence of what counsel failed to discover or what defenses counsel could have pursued had he more fully prepared for the case); *Skeen v. State*, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997) (where applicant failed to show ineffective assistance of counsel when he did not present evidence showing how additional preparation would have impacted the trial).

Counsel credibly testified that he met with Applicant between ten and twenty times. Applicant failed to establish what would have changed had additional meetings occurred. Also, based on Applicant’s own testimony, there was some discussion about the charges with Counsel. There has been no showing what further discussions about the charges would have consisted of or accomplished. Applicant has failed to meet his burden of proof and relief is denied accordingly.

Failure to discuss defenses with Applicant, present a proper defense, call defense witnesses, and to develop a full defense

Applicant claims Counsel was constitutionally ineffective for failure to discuss defenses, present a proper defense, call defense witnesses, and develop a full trial defense. Whether failure

to assert a defense constitutes deficient performance ultimately hinges on whether failure to explore the decision was a strategic decision. *Strickland*, 466 U.S. at 680. If there is only one line of defense, counsel must conduct a “reasonably substantial investigation” into that line of defense. *Id.* (quoting *Washington v. Strickland*, 693 F.2d at 1252). However, if there are several lines of defense, counsel may still be effective even if every single line is not explored. *Id.* “[W]hen counsel's assumptions are reasonable given the totality of the circumstances and when counsel's strategy represents a reasonable choice based upon those assumptions, counsel need not investigate lines of defense that he has chosen not to employ at trial.” *Id.* at 681 *Id.* (quoting *Washington v. Strickland*, 693 F.2d at 1255). Further, “[w]hen 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*, 540 U.S. at 5 (citing *Strickland*, 466 U.S. at 690).

Regarding failure to alert the Applicant of a defense specifically, Counsel will not be found ineffective if there was inadequate evidence to support the defense, if the defense did not exist at the time of trial, or another avenue of defense existed. *See McCray v. State*, 317 S.C. 557, 455 S.E.2d 686 (1995) (stating that failure to state an entrapment defense was not ineffective when the applicant denied any wrongdoing); *Arnette v. State*, 306 S.C. 556, 413 S.E.2d 803 (1992) (stating that failing to inform of a defense was not ineffective when there was no evidence at trial that supported the defense); *Robinson v. State*, 308 S.C. 361, 417 S.E.2d 361, 417 S.E.2d 88 (1992) (stating that Counsel was not ineffective when failing to state a defense that was not recognized by the Court until six years later and was just recently acknowledged by the scientific community).

At a minimum, counsel must interview potential witnesses and make independent investigations regarding the facts and circumstances of the case. *Ard. v. Catoe*, 372 S.C. 318, 642 S.E.2d 590 (2007). To show counsel was ineffective by failing to call a witness, the witness(es) must be produced at the PCR evidentiary hearing or their testimony must otherwise be presented, consistent with the rules of evidence. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). Mere speculation regarding the witness's testimony is insufficient to establish prejudice. *Clark v. State*, 315 S.C. 385, 434 S.E.2d 266 (1993).

“In most PCR cases in which the applicant seeks relief for trial counsel's failure to call witnesses, the PCR court's analysis—and the analysis by the appellate court—is focused on the strategic considerations of counsel in balancing the potential benefits of calling a particular witness against the identifiable risks.” *Buckson v. State*, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018).

Counsel's performance is not deficient if he decided not to present a witness as a tactical and strategic move, nor if the witness was unlikely to appear or present testimony that could have made a difference at trial. *See e.g. Smith v. State*, 404 S.C. 493, 502, 745 S.E.2d 378, 383 (2012) (finding that counsel was not deemed ineffective when petitioner failed to introduce any evidence that established prejudice to the petitioner); *Edwards v. State*, 392 S.C. 449, 457-58, 710 S.E.2d 60, 65 (2011) (stating that counsel was not ineffective because the witness could not withstand cross-examination due to his prior vacillation and the cumulative nature of his testimony and he knew the petitioner's statement to the police would be entirely consistent with the supposed witness's statement at trial); *Glover*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995) (finding that counsel was in deficient by failing to call all alibi witnesses when two witnesses who testified did not establish the alibi).

Further, prejudice will generally be found if the testimony was significant and favorable enough to the Applicant so that the trial proceedings results may have been different because of the testimony. *See e.g. Lounds v. State*, 380 S.C. 454, 670 S.E.2d 646 (2008) (finding that counsel was deficient by failing to call witnesses, for no other reason than lack of preparation, that may corroborated with the defendant or bolstered his credibility so that the findings at trial could have been favorable to the defendant); *Thomas v. State*, 308 S.C. 123, 417 S.E.2d 531 (1992) (finding that uncalled witness' testimony would have cast doubt on the sole witness' identification of the petitioner and, thus, would have made a difference at trial).

Applicant and Counsel both testified that they discussed trial strategy. Applicant admitted he agreed with Counsel's chosen strategy to a degree but wished he had called Ms. Thompson and had more thoroughly explored relationship strains he had with the victims' mother right before being accused.

Concerning failure to assert a proper defense generally, the transcript clearly reflects that Counsel presented a zealous defense at trial and that his actions were reasonable in whole.

Counsel credibly testified that he did not call Ms. Thompson after she made derogatory comments about Applicant regarding pedophilia. Not calling someone as a defense witness whose testimony likely would have negatively impacted the defense is more than reasonable. Applicant failed to produce Ms. Thompson at the PCR hearing and, thus, failed to meet his prejudice prong.

Concerning relational strains between Applicant and the victim's mother, Counsel testified that he and Applicant discussed the strain, but he instead elected to question the mother concerning her decision to have a lengthy phone conversation with someone out of state instead of tending to her daughters post-disclosure. This is a reasonable defense strategy, and Applicant

has failed to establish how further highlighting relationship strains would have helped him at trial. Thus, relief is denied on this ground.

Failure to investigate physical evidence, to argue that there was no physical evidence presented, and no DNA/serology evidence found in closing argument, and to cross-examine witnesses regarding lack of physical evidence

Applicant claims Counsel was constitutionally ineffective for failing to investigate physical evidence, to argue that no physical evidence, including DNA and serology evidence was presented in the case, and to cross-examine witnesses regarding the lack of physical evidence. Counsel credible testified that there was no physical evidence in the case but that the State did not need physical evidence to procure convictions. The trial transcript clearly reflects the fact that the jury was informed that there were no physical injuries to the victims. (Trial Tr. 224-32). Lack of DNA evidence, injuries and serology was apparent at trial and Counsel did cross-examine the pediatrician specifically concerning this. The lack of injuries specifically was highlighted in the defense's closing statement. (Trial Tr. 410-11). Additionally, Counsel is not responsible for investigating evidence that does not exist. Thus, the allegation is refused on the record and relief denied accordingly.

Failure to correctly explain burden of proof and reasonable doubt to the jury

Applicant claims Counsel was ineffective for failure to explain the burden of proof and reasonable doubt to the jury. Looking at the trial transcript as a whole and the court's jury instructions specifically, there is no reason to believe that the jury erroneously applied the burden of proof in reaching a verdict in this case. Applicant has failed to establish prejudice and relief is denied accordingly.

Failure to obtain a plea offer

Applicant claims Counsel was ineffective for failure to obtain a plea offer. This claim

fails on three separate grounds. First, the pre-trial transcript clearly reflects he was offered a plea offer (March 4, 2014, Pre-Trial Tr. 12). Second, Counsel has no ability to control state plea offers offered. Third, Applicant testified at his PCR hearing that even if he was offered a plea offer, he would not have taken it because he is innocent of the charges. Thus, relief is denied.

Failure to contemporaneously move for a mistrial and object to the Court's curative instruction when the witness mentioned Applicant was incarcerated before and to request a mistrial when a juror walked into the courtroom at the wrong time

Applicant claims Counsel was ineffective for failing to contemporaneously move for a mistrial and object to the Court's curative instruction when a witness mentioned Applicant was incarcerated before and for failure to move for a mistrial when a juror entered the courtroom at the wrong time.

Concerning the juror, the juror was excused when he entered during pre-trial. (Trial Tr. 99). This seemingly rectified the issue on the spot and there is no showing that a mistrial would have been appropriate or granted. Concerning the admission of prior incarceration, a curative instruction was given. Again, there is no reason to believe a mistrial would have been granted. This Court finds Counsel credible in his assertion that Applicant wanted to proceed with the trial that day and did not want a continuance and that the Court likely would not have granted a mistrial in this case. Thus, relief is denied on this ground.

Failure to properly cross-examine victims and their mother

Applicant claims Counsel was ineffective for failure to properly cross-examine the victims and their mother. He specifically wanted them cross-examined concerning the state of his relationship with the victims' mom. Counsel articulated a reasonable strategy regarding cross-examination of the victims – specifically that he had his female co-counsel handle these examinations and that he did not want to attack them because that tends to backfire when

confronting children who are alleged victims of sexual assault. Applicant stated that he even agreed with that strategy to a degree. Concerning cross-examination of their mother, Counsel testified that he and Applicant discussed the strain, but he instead elected to question the mother concerning her decision to have a lengthy phone conversation with someone out of state instead of tending to her daughters post-disclosure, undermining the allegations in that regard. This was a reasonable strategy as well.

Thus, Counsel was not deficient. Applicant has failed to establish how a change in approach would have resulted in a different outcome and, thus, failed to establish prejudice. Accordingly, relief is denied on this ground.

Failure to properly preserve objections to the State's closing argument for appellate review.

Applicant claims Counsel was ineffective for failure to properly preserve his objections to the State's closing argument for direct appeal. Counsel credibly testified that the Court explicitly told Counsel that he could make an objection but would not be permitted to expand upon the objection barring explicit permission from the judge. Counsel is not deficient for deciding to follow a judge's explicit directive at trial, especially since defying the court likely would have hurt Applicant more. Attempts at defying the court directive would have proven unsuccessful. Additionally, Applicant has failed to show how even if Counsel succeeded in putting his reasoning on the record, it would have led to a successful outcome on direct appeal. Accordingly, relief is denied on this ground.

Erroneously advising Applicant not to testify

Applicant claims Counsel was ineffective for erroneously advising him not to testify at trial. Counsel credibly testified that he discussed the right to testify with Applicant and that Applicant decided not to testify. This was reaffirmed by the court colloquy with the defendant

over his rights. (Trial Tr. 374-76). Counsel also credibly testified that he did not think testifying would have helped him since all Applicant had to essentially say on the matter was that he did not do it. Applicant has failed to establish that erroneous advice was given or how, if Applicant testified, the results would have been different. Relief is denied on this ground.

Malicious Prosecution Consequent to Jail Call

Applicant claims that the prosecutor maliciously prosecuted him consequent to a recorded jail call between Applicant and his father. Courts have recognized that prosecutors have many powers within the criminal justice system. Included in this, is “discretion in choosing how to proceed with a case, including whether to prosecute in the first place and whether he brings it to trial or offers a plea bargain.” *State v. Langford*, 400 S.C. 421, 435 n. 6, 735 S.E.2d 471, 479 n. 6 (2012). Additionally, prosecutors can use “punishment of the offender” as a proper motivation behind their behaviors and punitive motivations do not render otherwise lawful activity unlawful. *State v. Blakely*, 402 S.C. 650, 658, 742 S.E.2d 29, 33 (2013) (citing *State v. Fletcher*, 322 S.C. 256, 260, 471 S.E.2d 702, 704 (Ct.App.1996)).

However, a conviction will be reversed if the applicant can show prosecutorial vindictiveness, in that “the prosecutor acted with genuine animus toward the defendant” and “the defendant would not have been prosecuted but for that animus.” *State v. Odon*, 412 S.C. 253, 263, 772 S.E.2d 149, 154 (2015) (quoting *United States v. Wilson*, 262 F.3d 305, 314 (2001)) (quotations omitted). Otherwise, a “prosecutor’s charging decision is presumptively lawful.” *Id.* at 263-64 (quoting *United States v. Goodwin*, 457 U.S. 368, 384 n. 19 (2015)). The case in which an applicant can overcome the presumptive validity of the prosecutor’s actions is rare. *Id.* at 264 (quoting *Goodwin*, 457 U.S. at 384 n. 19).

Here, there is no evidence that the prosecutor vindictively or maliciously went after

Applicant. The offer given was reasonable, the trial was handled professionally, and Counsel credibly testified that he did not believe the prosecutor treated Applicant differently than anyone else. The claim falls flat facially and relief is denied on this ground.

Conclusion

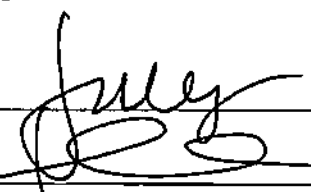
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court notifies Applicant that he 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 Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Your 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 15 day of July, 2026.



JESSICA SALVINI
Presiding Judge
Fifth Judicial Circuit

Greenville, South Carolina.