

STATE OF SOUTH CAROLINA )  
COUNTY OF GREENVILLE )

IN THE COURT OF COMMON PLEAS

Antonio Rashad Trimmier, )  
S.C.D.C. No. 337233, )  
Applicant, )

C.A. No. 2013-CP-23-1326

v. )

ORDER OF DISMISSAL

State of South Carolina, )  
Respondent. )

FILED - CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENSIMER  
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This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 7, 2013. The Respondent made its return on July 12, 2013. A hearing into the matter was held on October 23, 2014 before Judge Letitia H. Verdin at the Greenville County Courthouse. The Applicant was present and represented by Richard H. Warder, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial counsel, Amanda L. Wicker, Esquire and Tasha Trimmier. The Court had before it the transcript of the trial; the Greenville County Clerk of Court records, including the arrest warrant, indictment and sentencing sheet; the Applicant's South Carolina Department of Corrections Records; the brief from the Applicant's direct appeal, the Court of Appeals' opinion dismissing the Applicant's direct appeal; the Appellant PCR Application, and the Return.

After the hearing, the Applicant moved to amend and supplement his application for PCR. The Court granted this motion, and permitted the State to make a return. Upon receipt of all further documentation, the Court hereby dismisses the PCR application.



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## PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the September 2008 term of General Sessions for armed robbery (2008-GS-23-2523, count 1) and possession of a weapon during the commission of a violent crime (2008-GS-23-2523, count 2). Amanda Lackland, Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty. On October 6, 2009, the Honorable John C. Few levied concurrent sentences of twenty-two years for armed robbery and five years for possession of a weapon during the commission of a violent crime.

A notice of appeal was filed at the South Carolina Court of Appeals. M. Celia Robinson, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of an Anders brief. The Court of Appeals dismissed the Appeal. State v. Trimmier, Op. No. 2012-UP-070 (S.C. Ct. App. Feb. 8, 2012).

## ALLEGATIONS

In this application, the Applicant alleges that he received ineffective assistance of counsel and that during the trial the Assistant Solicitor committed prosecutorial misconduct by making improper comments. Regarding the ineffective assistance of counsel claim, the Applicant particularly alleges the following:

- a. Failure to investigate certain claims and defenses, such that the Applicant's rights under the Confrontation Clause were violated;
- b. Failure to produce other evidence and documents prior to trial; and
- c. Failure to explain the importance of trial rights before going to trial.

During his PCR hearing, the Applicant proceeded solely on his ineffective assistance claim.



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## FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. 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 conclusions of law as required by S.C. Code Ann. § 17-27-80 (2014).

### Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his attorney failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his attorney’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 686 (1984); Porter v. State, 368 S.C. 378, 629 S.E.2d 353, 356 (2006). Regarding the first prong, the Applicant must in essence show that counsel’s advice was not “within the range of competence demanded of attorneys in criminal cases.” Hill v. Lockhart, 474 U.S. 52, 56 (1985). In order to prove prejudice, an applicant must show “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). A reasonable probability is “a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 686).

  
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Furthermore, the decisions and advice of trial counsel should be assessed for reasonableness under all the circumstances, with heavy deference given to counsel's judgment. Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). A criminal defense attorney has a duty to conduct a reasonable investigation so that he may discover all reasonably available mitigation evidence, as well as any reasonably available evidence tending to rebut evidence produced by the state. McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 361 (2008). There is a strong presumption that adequate assistance of counsel was rendered, and that reasonable care was exercised—particularly in the arena of professional judgments. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 597 (2007). Finally, South Carolina courts recognize that one month is sufficient time for an attorney to prepare for a criminal trial. State v. Greuling, 257 S.C. 515, 520, 186 S.E.2d 706, 708 (1972).

**a. Failure to investigate certain claims and defenses.**

The Applicant claims that trial counsel did not conduct an adequate investigation into his case prior to trial. Particularly, the Applicant argues that trial counsel did not discover geographic monitoring information from the Home Incarceration Program (HIP) which could have provided him with an alibi for the events in question and that trial counsel did not sufficiently investigate the background of the State's witnesses for the purposes of preparing an adequate cross examination. Additionally, the Applicant claims that trial counsel improperly decided not to cross examine three of the State's witnesses relating to their gang membership, though such evidence would have demonstrated a motive for the witnesses to turn on the Applicant and testify against him.

The Applicant further argues that trial counsel was ineffective because she did not discover additional evidence which could have been helpful in his defense. The Applicant points



particularly to evidence of pending charges against the State's witnesses which he believes would have been helpful impeachment evidence. Additionally, the Applicant argues that the police report in his case was heavily redacted, and that trial counsel failed to further investigate or challenge the contents of the report.

Finally, the Applicant claims that trial counsel was ineffective for failing to properly prepare him for trial and explain his trial rights. Initially, the Applicant asserts that he desired to plead guilty to the charges. However, he claims that this option was not presented to him before the start of the trial. Moreover, trial counsel was appointed to represent the Applicant one month before the trial date. The Applicant believes this was an insufficient amount of time to prepare for his trial. The Applicant also argues that trial counsel did not adequately advise him regarding the benefits and drawbacks of testifying in his own defense. During the PCR hearing, the Applicant stated that when he broached the subject with trial counsel, she informed him that "it could go either way."

The Applicant's trial counsel testified that, as a matter of trial strategy, she believed that the evidence of HIP monitoring and gang affiliation would be more prejudicial than helpful. She also feared that the use of HIP's GPS monitoring would open the door to evidence of the Applicant's prior criminal record. Trial counsel's belief in the potential harmful effect of such evidence was so strong that she moved to limit gang-related testimony prior to trial. This Court finds that such determinations of trial counsel are entitled to strong deference in accordance with Simpson v. Moore, 367 S.C. at 597, 627 S.E.2d at 706. The Applicant's trial counsel did not testify at the PCR hearing on the subject of additional undiscovered evidence.

During the PCR hearing, the Applicant's trial counsel also stated that upon her appointment she received little information about plea negotiations conducted by the Applicant's



original trial counsel. Any plea offer which had been previously made expired prior to her appointment in the case. Trial counsel attempted to open new plea negotiations with the Solicitor's Office, but was unable to reach an agreement prior to trial. This Court finds that counsel was not ineffective for failing to reach a plea agreement prior to the Applicant's trial.

Finally, the Applicant's trial counsel testified that it is her common practice to discuss a defendant's right to testify before a trial begins. Any discussion of an alibi defense would likewise occur prior to the start of the trial. Trial counsel particularly stated that the Applicant did not express a desire to testify and that she believed cross examination would be sufficient to bring out the bias of the State's witnesses. Additionally, trial counsel testified that while she was appointed to represent the Applicant one month prior to trial, she felt adequately prepared to proceed. This Court finds that trial counsel was afforded adequate time to prepare for trial in accordance with Greuling, 257 S.C. at 520, 186 S.E.2d at 708. This Court further finds no evidence presented by the Applicant which demonstrates any ineffective assistance of trial counsel. Therefore the Applicant has not met his burden of proving that trial counsel was ineffective for failing to conduct a sufficient investigation, to present a sufficient defense, or adequately prepare him for trial in his case.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test—that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed wither errors or omissions in her representation of the Applicant. This Court also finds that the Applicant has failed to prove the second prong of Strickland—that he was prejudiced by trial counsel's performance. This Court concludes the Applicant has not

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met his burden of proving counsel failed to render reasonably effective assistance. See Frasier, 351 S.C. at 389, 570 S.E.2d at 174.

### **Prosecutorial Misconduct**

To prevail on a claim of prosecutorial misconduct, a defendant must show that the prosecutor's remarks or conduct were, in fact, improper, and that such remarks or conduct prejudiced the defendant to such an extent as to deprive the defendant of a fair trial. 21 Am. Jur. 2d Criminal Law § 429 (2014). In South Carolina, prosecutorial misconduct may occur through intentional or unintentional conduct of the State's attorney. State v Inman, 395 S.C. 539, 559, 720 S.E.2d 31, 42 (2011). Where prosecutorial misconduct is identified, a court must take steps to cure the error. The prejudicial effect of prosecutorial misconduct is determined by (1) the cumulative effect of such misconduct; (2) the strength of the properly admitted evidence of the defendant's guilt; and (3) the curative actions taken by the court. Inman, 395 S.C. at 565, 720 S.E.2d at 45.

The Applicant claims that the Assistant Solicitor made improper comments throughout the course of his trial, and that these comments constitute prosecutorial misconduct such that his conviction should be overturned. However, the Applicant has directed the Court's attention to no specific instance of such a comment within the trial transcript, and the Applicant presented no evidence on this subject during the PCR hearing. Furthermore, the Court's independent review of the trial transcript has yielded no comment which could be construed as an improper remark or action. Since there has been no improper conduct or comment, there likewise can be no prejudice resulting from any alleged misconduct. Therefore, this Court finds that the Applicant has not met his burden of proving that prosecutorial conduct occurred, and the Applicant is not entitled to PCR on this ground.

A handwritten signature in black ink, appearing to be the initials 'JL' with a flourish underneath.

**All Other Allegations**

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

**CONCLUSION**

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by Counsel's representation. Furthermore, this Court finds no evidence of prosecutorial misconduct. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

**IT IS THEREFORE ORDERED:**

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

**AND IT IS SO ORDERED** this 21 day of January, 2015.



Letitia H. Verdin  
Circuit Court Judge  
Thirteenth Judicial Circuit

