

THE LAW OFFICE OF JONATHAN WALLER, LLC
1720 MAIN STREET, SUITE 104
COLUMBIA, SC 29201

April 17, 2015

Daniel E. Shearouse
Clerk of Court
Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

RECEIVED

APR 23 2015

S.C. Supreme Court


Re: Robert Singletary vs. State of South Carolina
C/A No: 2013-CP-21-01159

Dear Mr. Shearouse:

Please find enclosed one (1) original and one (1) copy of Applicant's Notice of Appeal and Certificate of Service in the above referenced case. I would greatly appreciate you filing the original and returning the clocked copy in the enclosed envelope.

If you have any questions, please do not hesitate to ask. My telephone number is 803-256-0011.

Sincerely,



Jonathan D. Waller

Enclosures

Cc: J. Croom Hunter
SC Commission on Indigent Defense

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM FLORENCE COUNTY
Edgar W. Dickson, Circuit Court Judge

2013-CP-21-01159

RECEIVED

APR 23 2015

S.C. Supreme Court

Robert Singletary, #189516,

Appellant,

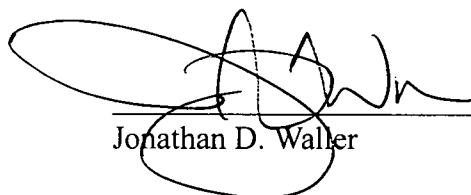
v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Robert Singletary, #189516, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed April 1, 2015 and served on counsel by letter dated April 2, 2015, issued by the Honorable Edgar W. Dickson, Presiding Judge, Twelfth Judicial Circuit.



Jonathan D. Waller

The Law Office of Jonathan Waller, LLC
SC Bar No.: 76290
1720 Main Street, Suite 104
Columbia, SC 29201
803-256-0011 (phone)
866-213-8870 (fax)
jonathanwallerlaw@gmail.com
ATTORNEY FOR PETITIONER

This 17 day of April, 2015.

Other Counsel of Record:
J. Croom Hunter, Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3319

STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

APR 23 2015

APPEAL FROM FLORENCE COUNTY
Edgar W. Dickson, Circuit Court Judge

S.C. Supreme Court

2013-CP-21-01159

Robert Singletary, #189516,

Appellant,

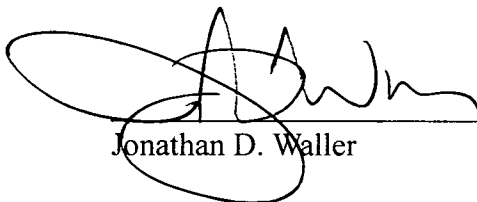
v.

STATE OF SOUTH CAROLINA,

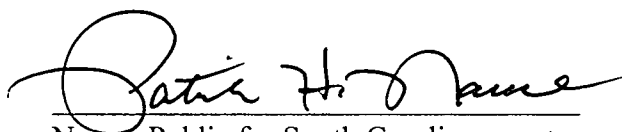
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Appellant's Notice of Appeal in the above-entitled case has been served upon opposing counsel, J. Croom Hunter, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this 17 day of July 2014.


Jonathan D. Waller

SWORN TO BEFORE me this 17th day
of April, 2015.



Notary Public for South Carolina

My Commission Expires: 08/17/2015

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
IN THE COURT OF COMMON PLEAS

FILED

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP2101159

Robert Singletary

2015 APR -2 AM 10:33

South Carolina State Of

JANNIE REEL-SHEA
CCCP & GS
FLORENCE COUNTY, SC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

4/2/2015

Date

For Clerk of Court Office Use Only

CERTIFIED: A TRUE COPY
Cassie Fel-Shea
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

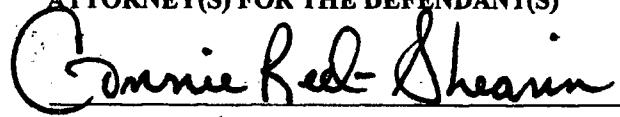
This judgment was entered on April 1, 2015, and a copy mailed first class or placed in the appropriate attorney's box on April 2, 2015, to attorneys of record or to parties (when appearing pro se) as follows:

Jonathan D Waller 1720 Main Street Suite 104 Columbia, SC 29201

Joshua L. Thomas PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



Court Reporter

Connie Reel-Shearin - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

FILED

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

2015 APR -)

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

Robert Singletary, #189516,

CONNIE REEL-SHILKIN
C.C.P. & G.S.
FLORENCE COUNTY

Case No. 2013-CP-21-1159

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before the Court by way of an Application for Post-Conviction Relief filed April 30, 2013. Respondent made a timely Return on or about September 13, 2013. The Court convened an evidentiary hearing into the matter on October 9, 2014, at the Florence County Courthouse. Applicant was present at the hearing and represented by Jonathan D. Waller, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, William V. Meetze, Esquire, also testified. The Court had before it a copy of the trial transcripts, the records of the Florence County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the pleadings in this matter. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Florence County Clerk of Court. In September 2009, the Florence County Grand Jury indicted Applicant for lewd act on a minor and first degree criminal

CERTIFIED: A TRUE COPY
Connie Reel-Spearis
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

sexual conduct with a minor (2009-GS-21-1350). William V. Meetze, Esquire ("trial counsel"), represented Applicant. On June 21, 2010, Applicant proceeded to trial before the Honorable D. Craig Brown and a jury. On June 23, 2010, the jury found Applicant guilty as indicted. Judge Brown sentenced Applicant to concurrent terms of thirty (30) years for criminal sexual conduct with a minor and fifteen (15) years for lewd act on a minor.

Applicant filed a timely notice of appeal, and Breen R. Stevens, Esquire, of the Office of Appellate Defense represented Applicant on appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on October 31, 2012. State v. Singletary, Op. No. 2012-UP-589 (S.C. Ct. App. filed October 31, 2012). The Court of Appeals returned the remittitur to the circuit court on November 16, 2012.

II. ALLEGATIONS

In his application, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. "6th amend[ment]"
 - a. "Strickland v State - Martinez vs Ryan - Strickland vs Washington"
2. "The right to A Fair Trial"
 - a. "My Attorney wouldn't let me testify. Did not object to sentence"
3. "The right to present Evidence on my behalf"
 - a. "I gave my Attorney cancel checks, telephone bill, light bill & rent receipt"
4. "The right for me to have witnesses on my behalf"
 - a. "My Attorney wouldn't call my witnesses to testify that I was elsewhere"
5. "Sentencing was extreme"

At the evidentiary hearing, Applicant proceeded on only the following allegations:

1. Ineffective assistance of trial counsel for failing to impeach the victim with her prior statement.

2. Ineffective assistance of trial counsel for failing to object to Debbie Elliott's qualifications as an expert.
3. Ineffective Assistance of counsel for failing to object to improper questioning of Debbie Elliott.

Applicant submitted a "Memorandum in Support of Applicant's Application for Post-Conviction Relief" on or about November 10, 2014. Respondent submitted a "Memorandum in Opposition to Post-Conviction Relief" on or about November 25, 2014.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. The Court has weighed the testimony accordingly. Generally, the Court finds trial counsel's testimony credible and Applicant's not credible. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

A. Summary of Testimony

Applicant testified trial counsel was his second attorney. He testified he gave trial counsel several documents to demonstrate he did not possess the properties where the victim claimed she was raped on the dates she alleged he raped her. He also testified trial counsel never explained the indictment or potential sentences. He did admit he somewhat reviewed the State's discovery response. Applicant testified trial counsel advised him not to testify at trial because he had a prior record.

Trial counsel testified he was assigned the case as part of his duties as a public defender. He recalled having a number of meetings with Applicant and reviewing discovery, the charges, and the possible punishments. He recalled reviewing the documents Applicant provided

regarding the possible dates of the alleged crimes. Trial counsel testified these documents did not demonstrate Applicant had an alibi for the crimes. He testified his trial strategy was to attack the credibility of the victim. Trial counsel recalled the victim testifying she could not remember how she answered many questions in her assessment interview. However, he also recalled many of the interview questions he inquired of were actually asked of her family member, and not the victim. He also explained he did not want to further reference the victim's recorded statement because it may open the door to the State introducing the video of her statement.

Trial counsel testified he had no grounds to object to Debbie Elliott's qualification as an expert on assessment, although he believed it was unnecessary for the State to qualify her as one. He recalled Elliott not answering a question from the solicitor about whether the victim's answers were consistent. However, he did recall lodging an objection to a later question about whether the victim behaved like a victim of sexual assault. Trial counsel testified the trial judge overruled this objection and denied a subsequent motion for a mistrial.

B. Ineffective Assistance of Trial Counsel

In this post-conviction relief action, Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of trial counsel as a ground for relief, Applicant must prove trial counsel's "conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether trial counsel provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The Court strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The Court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove trial counsel's performance was deficient. Id. Under this prong, the Court measures trial counsel's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, trial counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

1. Failure to Impeach the Victim with Her Prior Statement.

The Court finds Applicant failed to meet his burden to prove trial counsel ineffective in failing to further cross-examine the victim. Regarding this allegation, the Court finds trial counsel's testimony credible and gives it great weight. Trial counsel did not want to go into too much detail regarding the victim's recorded statement because it may open ~~to~~ ^{the} door to show the jury the video of her assessment. The video was taken when the victim was much younger, and trial counsel believed it would have portrayed her in a more sympathetic light. The Court finds trial counsel's reasoning for not further impeaching the victim with her statement constitutes a

valid strategic decision. Watson v. State, 370 S.C. 68, 73, 634 S.E.2d 642, 644 (2006) (valid strategy to avoid questions that “might lead to the more damaging introduction of the victim’s videotape.”).

The Court also finds Applicant failed to show how further impeachment of the victim would have changed the result of his trial. Trial counsel impeached the victim with her history of sexual activity with children her age to the extent the trial judge would allow him. (June 21, 2010 Trial Tr. p. 87, line 5-p. 91, line 13). He attempted to impeach the victim with answers to certain background questions he believed were asked of her at the assessment. However, he understood those questions were asked of the victim’s family member, not the victim. (June 21, 2010 Trial Tr. p. 110, line 19-p. 112, line 3). The statements Applicant alleges should have been used to impeach the victim were actually the statements of a third-party. Thus, trial counsel could not have been expected to use them to impeach the victim. See Palacio v. State, 333 S.C. 506, 514, 511 S.E.2d 62, 67 (1999) (no deficiency where “it would have been futile for Attorney to have made such arguments”). Furthermore, trial counsel did attempt to impeach the victim with as much of her prior statement as possible without opening the door to the introduction of the video. In light of the entire trial record, the Court finds Applicant has not demonstrated trial counsel performed deficiently in his cross-examination of the victim, or that he was prejudiced by trial counsel’s performance. See, e.g., Skeen v. State, 325 S.C. 210, 216-17, 481 S.E.2d 129, 133 (1997) (“[O]ne can only speculate whether a ‘better’ cross examination would have helped Skeen.”); Simpson v. Moore, 367 S.C. 587, 598 n.2, 627 S.E.2d 701, 707 n.2 (2006) (“Though hindsight may provide a different view of counsel’s actions, Simpson is not entitled to a new trial

for the sole purpose of presenting a 'fancier' case." (citing Jones v. State, 332 S.C. 329, 504 S.E.2d 822 (1998))).

2. Failure to Object to Debbie Elliott's Qualifications as an Expert.

The Court finds Applicant failed to meet his burden to prove trial counsel ineffective in failing to object to Elliott's qualifications as an expert. Expert testimony and behavioral evidence is admissible to prove a sexual assault occurred. State v. Schumpert, 312 S.C. 502, 506, 435 S.E.2d 859, 862 (1993). Elliott testified she has a Bachelor of Arts degree in sociology, training in forensic assessments, and twenty-five years of experience working with abused children. (June 21, 2010 Trial Tr. p. 104, line 9-p. 106, line 6). The State presented her as an expert in the field of child sexual and physical abuse. The fact Elliott also has training as a forensic interviewer does not preclude her from being qualified as an expert in a related field as long as her credentials in the related field also pass muster. Elliott's qualification as a child sex abuse expert was proper based on her training and experience dealing with victims of child sex abuse. Id. at 505-06, 435 S.E.2d at 861 (witness properly qualified as sexual abuse expert with master's degree in social work, completion of training seminars regarding sexual abuse victims, and extensive work experience). Because the State established Elliott's training and experience, trial counsel could not have interposed a valid objection to her qualification as an expert. Palacio, 333 S.C. at 514, 511 S.E.2d at 67.

3. Failure to Object to Improper Questioning of Debbie Elliott.

The Court finds Applicant failed to meet his burden of proof to show trial counsel ineffective for failing to object to improper questioning of Elliot. Applicant alleges the State asked an improper question about the victim's consistency. However, the witness did not answer

the question. (June 21, 2010 Trial Tr. p. 112, line 15-17). Trial counsel could not have objected to improper bolstering here because no such bolstering actually occurred. Palacio, 333 S.C. at 514, 511 S.E.2d at 67.

Applicant also alleges trial counsel should have objected to a question about the victim's disclosure. However, this question was not posited by the State, but by trial counsel. (June 21, 2010 Trial Tr. p. 125, lines 12-17). Trial counsel cannot object to his own question. Furthermore, trial counsel's question was proper time or place corroborating testimony. Dawkins v. State, 346 S.C. 151, 156, 551 S.E.2d 260, 262 (2001) ("When the victim testifies, evidence from other witnesses that the victim complained of the sexual assault is admissible in corroboration; however, such evidence is limited to the time and place of the assault and cannot include details or particulars." (citing Jolly v. State, 314 S.C. 17, 443 S.E.2d 566 (1994); State v. Munn, 292 S.C. 497, 357 S.E.2d 461 (1987))). This question was proper in light of trial counsel's strategy to attack the victim's credibility. See Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) ("Where, as here, counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel." (citing Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992))).

Finally, the record demonstrates trial counsel raised objections on several occasions and those objections were either sustained or overruled. Trial counsel moved for a mistrial when one such objection was overruled. (June 21, 2010 Trial Tr. p. 118, line 3). In light of trial counsel's thorough and timely objections where necessary, the Court finds Applicant failed to demonstrate trial counsel's performance in this regard was deficient, or that he was prejudiced by trial counsel's performance.

C. 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, the Court finds Applicant failed to present any evidence or arguments regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant was not deprived of effective assistance of trial counsel. Trial counsel's decisions and conduct were reasonable in the circumstances, and did not fall below professional norms of competency. Because Applicant has not established any constitutional violations or deprivations that would require this Court to grant him relief, the Court finds this application for post-conviction relief must be denied and dismissed with prejudice.


The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from his attorney's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, provides that if Applicant wishes to seek appellate review, he must inform his attorney to serve and file a notice of appeal on Applicant's behalf. The parties are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and

2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 25th day of March, 2015.


~~to~~ THE HONORABLE EDGAR W. DICKSON
Presiding Judge

Orangeburg, South Carolina

2015 APR - 1 AM 11:34
CONNIE REEF-SILVANO
COPP & GS
FLORENCE COUNTY, SC

FILED

CERTIFIED: A TRUE COPY
Connie Reef-Silvano
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

