

5

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable Roger L. Couch, Circuit Court Judge

Case No. 2013-CP-42-0532

State of South Carolina

Respondent,

v.

Louie Alvoid Chapman,
#98290

Appellant.

Notice of Appeal

RECEIVED
MAY 14 2015
SC Court of Appeals

RECEIVED
MAY 20 2015
S.C. Supreme Court

Louie Alvoid Chapman appeals the order of the Honorable Roger L. Couch dated March 27, 2015. Appellant received written notice of entry of this order on March 31, 2015.

April 30, 2015

Sincerely,

s/ 

Brandt Rucker
Attorney for Appellant Louie Alvoid
Chapman
522 North Church Street
Greenville, South Carolina 29601
(864) 271-9925
Attorney for Appellant

cc:
Other Counsel of Record:

Suzanne White
Office of the South Carolina Attorney General
P.O. Box 11549
Columbia, S.C. 29211

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

MAY 14 2015

SC Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable Roger L. Couch, Circuit Court Judge

Case No. 2013-CP-42-0532

RECEIVED

MAY 20 2015

S.C. Supreme Court

State of South Carolina

Respondent,

v.

Louie Alvoid Chapman,
#98290

Appellant.

Proof of Service

I certify that I have served the Notice of Appeal and the Proof of Service on the State of South Carolina by depositing a copy of those documents in the United States Mail, postage prepaid, on April 30, 2015, addressed to its attorney of record, Suzanne White Office of the South Carolina Attorney General, P.O. Box 11549, Columbia, S.C. 29211

April 30, 2015

Sincerely,

s/



Brandt Rucker

Attorney for Appellant Louie Alvoid
Chapman

522 North Church Street
Greenville, South Carolina 29601

(864) 271-9925

Attorney for Appellant

cc:

Other Counsel of Record:

Suzanne White
Office of the South Carolina Attorney General

P.O. Box 11549
Columbia, S.C. 29211

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Louie Alvoid Chapman, #98290,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

RECEIVED

MAY 14 2015

2013-CP-42-0532

SC Court of Appeals

ORDER OF DISMISSAL

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2015 MAR 27 AM 8:47
 M. HOPE BLACKLOCK

This matter comes before the Court by way of an Application for Post-Conviction Relief filed February 6, 2013. The Respondent made its Return on or about March 27, 2014. An evidentiary hearing into the matter was convened on September 16, 2014, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by J. Brandt Rucker, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Richard Whelchel, Esquire, also testified. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, the Appellate Court records, and the trial transcript.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. He was indicted at the August 2010 term of the Spartanburg County Grand Jury for attempted murder (2010-GS-42-4831). The Applicant was represented by Richard Whelchel, Esquire. On July 14, 2011, the

 COALINED

DR
PI

Applicant was convicted of the charge by a jury. The Honorable J. Derham Cole sentenced Applicant to twenty years.

A timely notice of appeal and Anders brief were filed on Applicant's behalf. The South Carolina Court of Appeals dismissed Applicant's appeal. State v. Chapman, Op. No. 2012-UP-682 (filed December 28, 2012). The Remittitur was returned on January 22, 2013.

ALLEGATIONS

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

1. Ineffective assistance of counsel, in that;
 - i. Counsel failed to object to and properly preserve for appellate review the issue of the incorrect jury charge;
 - ii. Counsel failed to seek a bond hearing on Applicant's behalf after several requests;
 - iii. Counsel failed to investigate the chain of custody regarding the physical evidence introduced by the State;
 - iv. Counsel failed to spend enough time with Applicant discussing trial and possible defenses with only three visits in which offers were discussed;
 - v. Counsel failed to investigate or have an independent examination of the substance on the shirt or the fired cartridge cases;
 - vi. Counsel failed to object to introduction of evidence based upon false information provided to obtain a search warrant;
 - vii. Counsel failed to object to the perjured testimony by State's witnesses and the State's use of that perjured testimony.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2015 MAR 27 AM 8:47
M. HOPE BLACKLEY

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. 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 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. This Court found the testimony of Counsel to be more credible than the testimony of Applicant as to all allegations raised at the hearing.

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) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that “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.” Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing* Strickland. Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that,

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2015 MAR 27 AM 8:47
HOPE BLACKKEY

Pal
13

but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "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).

Applicant testified that he met with Counsel three times, but only met for a few minutes each time. Applicant testified that he was never able to bond out prior to trial. Applicant testified that Counsel only wanted to talk with Applicant about possible pleas. Counsel never reviewed discovery materials with the Applicant and did not complete a thorough investigation prior to trial. Applicant testified that he provided Counsel with the names of witnesses specifically Applicant's brother, but Counsel did not call any witnesses at trial other than Applicant. However, Applicant did acknowledge that his brother was not present at the scene of the shooting, so he could not have testified as to what occurred.

Counsel testified that he recalled representing the Applicant in 2011. Counsel testified that at the time, he had practiced law in South Carolina for almost thirty years and handled numerous other serious cases. Counsel testified that he believed he met with Applicant five or six times; however, Counsel could not recall. Counsel testified that it would be his normal practice to meet with a client five or six times before trial. Counsel testified that he met with the Applicant each time at the detention center because the Applicant never bonded out. Counsel testified that he did speak with the Applicant about entering a plea because he believed a plea was in Applicant's best interest. Counsel testified that the State made three offers: 1) twenty years, 2) twelve years, and 3) twelve years negotiated.

Counsel testified that he did review all discovery materials with the Applicant, including witness statements and investigative reports. Counsel testified that Applicant did explain his side

FILED
CLERK OF COURT
SPARTANBURGH COUNTY
2015 MAR 27 AM 8:47
M. HOPE BLAKEY

Page 4

of the story and provided the defense that he was fishing and not at the scene. Counsel testified that he saw no issues with the chain of custody as to any of the physical evidence introduced by the State.

Applicant testified that the State alleged that the shirt he was wearing at the time of his arrest had dark spots on it, which could have been blood. However, Applicant testified that the spots were from motor oil. Applicant testified that Counsel failed to have the shirt tested to show that the spots were not blood. Applicant also testified that spots on his car seat were tested to see if they were blood and the substance did not come back as blood, but Counsel did not present that evidence to the jury.

Applicant also testified that the alleged eyewitness to the shooting, although she claimed she had seen Applicant shoot the victim, stated that she never saw a gun. Applicant testified that he believed that there was insufficient cause to execute a search warrant and Counsel failed to object to the illegal search. Applicant also testified that he believed that there was no medical evidence to prove that the victim had even been shot.

Counsel testified that he would have presented that evidence to the jury had he believed the dark spots on the Applicant's shirt was transmission fluid or motor oil instead of blood. Counsel testified that he was able to cross-examine the State's experts as to the fact that they could not affirmatively state that the substance was blood. Counsel testified that there was no legal basis to object to the search of the home or the victim's grandmother's car. Counsel also testified that the most damning evidence against the Applicant was the fact that there were only two people in the room at the time of the shooting (Applicant and victim) and the victim's grandmother saw Applicant place his fist up to the victim's neck immediately before the victim began bleeding. The Sheriff's office also found spent cartridge casings around the kitchen table

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2015 MAR 27 AM 8:47
M. HOPE SLACKLE

where the victim was shot. Both the victim and his grandmother testified against Applicant at trial, in addition to the neighbor who saw Applicant at the home at the time of the shooting. Counsel testified that he did not request a gunshot residue test of Applicant because the Applicant was arrested days after the shooting and the test would have been useless.

Applicant testified that Counsel failed to request a curative instruction following the incorrect statement by the trial judge that a killing occurred. Applicant testified that the trial judge corrected himself by stating that it was a trial on attempted murder, but Applicant testified that Counsel should have requested a curative instruction.

Counsel testified that had he believed the jury instructions were improper or that a curative instruction was needed, he would have objected or made the request. Additionally, Counsel testified that he did not feel there was any legal basis to object during the State's closing arguments.

This Court finds that the Applicant's allegations that Counsel did not conduct an adequate pre-trial investigation or prepare enough for trial are without merit. The "brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Stelle, 609 F.2d 756, 759 (5th Cir. 1980). To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

When claims of ineffective assistance of counsel are based on lack of preparation time, an Applicant challenging his conviction must also show specific prejudice resulting from

PR
26

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2015 MAR 27 AM 8:47
M. HOPE L. AUSTIN

counsel's alleged lack of time to prepare. United States v. Cronie, 466 U.S. 648, 104 S.Ct. 2039 (1984); U. S. v. LaRouche, 896 F.2d 815 (4th Cir. 1990). As an initial matter, this Court finds that whether or not the Applicant had a bond hearing or was released on bond is completely irrelevant as to his attorney's performance at trial. This Court notes that Counsel has years of experience representing clients on similar charges and remains updated on case law through research. The Applicant failed to point to any specific matters Counsel failed to discover, or any defenses that could have been pursued had Counsel been more fully prepared or had completed additional investigation prior to the case being called to trial. Although he alleged that Counsel was ineffective for failing to investigate the alleged spots on Applicant's shirt and in the car, Applicant failed to produce any evidence that would have supported his defense. There was also no evidence or testimony that the chain of custody as to the cartridge cases was faulty or had been tainted. Furthermore, the Applicant failed to show any prejudice that may have resulted from Counsel's alleged inadequate preparation or lack of investigation.

In regards to the Applicant's allegation that Counsel was deficient in his cross-examination of the State's witnesses, this Court finds that the Applicant has failed to meet his burden of proof. The nature and scope of cross-examination is inherently a matter of legal tactics. United States v. Nersesian, 824 F.2d 1294, 1321 (2nd Cir. 1987). "[A] defendant has a burden of supplying sufficiently precise information,' of the evidence that would have been obtained had his counsel undertaken the desired investigation and of showing 'whether such information . . . would have produced a different result.'" United States v. Rodriguez, 53 F.3d 1439, 1449 (7th Cir. 1995). The Applicant did not proffer any questions counsel allegedly failed to ask, and did not present any testimony showing the witnesses' answers at trial would have been different. Applicant alleged that the witnesses presented perjured testimony; however, the Applicant has

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2015 MAR 27 AM 8:44
M. HOPE BRADLEY

not shown that a different approach to cross-examination would have been beneficial to the defense. Furthermore, this Court finds no legal basis for Counsel to object to the jury charges or the search warrant and cannot find any deficiency as to Counsel's performance overall.

In making a fair assessment of attorney performance, a court must make every effort to "eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." Strickland v. Washington, 466 U.S. 668, 689, 104 S. Ct. 2052, 2065, 80 L. Ed. 2d 674 (1984). There is a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance and the "defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." Id. This Court finds that the Applicant has failed to meet his burden of proof as to all claims that counsel was ineffective.

Overwhelming Evidence

Finally, this Court finds that the Applicant was not prejudiced by any alleged deficient representation because there was overwhelming evidence of the Applicant's guilt. Applicant was identified as the shooter by the victim and the only other eyewitness, the Applicant's girlfriend at the time of the shooting. Where there is overwhelming evidence of guilt, a trial counsel's deficient representation will not be prejudicial. Ford v. State, 314 S.C. 245, 442 S.E.2d 604 (1994); See also Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001); Geter v. State, 305 S.C. 365, 409 S.E.2d 344 (1991). In Ford, trial counsel failed to request an alibi instruction and his representation was found deficient as a result. However, the evidence of the Applicant's guilt in Ford was overwhelming and this Court held that the Applicant failed to prove the second prong of Strickland, which requires that an Applicant show prejudice by the



FILED
CLERK OF COURT
SPRINGS
BURG COUNTY
2015 MAR 27 AM 8:47
HOBE BLACKLEY

deficient representation. Likewise, the Applicant here has shown no prejudice resulting from any alleged deficient representation.

Summary

This Court finds in regards to the allegation of ineffective assistance of counsel, Applicant's testimony as a whole was not credible. This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in his representation, and that Counsel's conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. See *Grasler supra*. Therefore, this allegation is denied.

CONCLUSION

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

This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the

FILED
CLERK OF COURT
STANBURG COUNTY
2019 MAR 27 AM 8:47
MICHOPE BLACKLEY




appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an 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 the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 26th day of March, 2015, ~~2014~~.



Roger L. Couch
Presiding Judge

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2015 MAR 27 AM 8:47
M. HOPE BLACKLEY

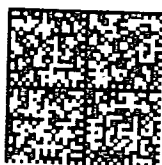
Brandt Rucker
Attorney at Law, L.L.C.
522 North Church Street
Greenville, South Carolina 29601

RECEIVED

MAY 14 2015

SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211



UNITED STATES POSTAGE
PITNEY BOWES
02 1P \$ 002.660
0001812653 MAY 11 2015
MAILED FROM ZIP CODE 29601