

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

Roger L. Couch, Circuit Court Judge

VOLUME II of II

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S. C. Supreme Court

SUPREME RAHAAM ACKBAR,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001052

APPENDIX

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Roger Poole - Cross-examination
by Mr. Rucker

1 Q Okay.

2 A I didn't look much further than that.

3 Q Did you talk about the relationship with Mr. Ackbar
4 that he had to these witnesses?

5 A Yes, I did.

6 Q Okay. Did you talk to him about Marcus Wright driving
7 him over there that night?

8 A Yes, we talked about that.

9 Q All right. Did you talk to him or talk directly to
10 Marcus Wright about any motive he would of had to have
11 committed this murder?

12 A I did not talk to Marcus Wright about it, and I don't
13 think I talked to Mr. Ackbar about it.

14 Q Okay. Do you recall if Mr. Wright was represented by
15 counsel at the -- in the early stages of your, of your
16 investigation?

17 A I'm sure he was.

18 Q Okay. Do you---

19 A But I don't remember who.

20 Q Okay. Don't -- it's important though that if eye
21 witnesses are, are testifying that they saw a crime
22 committed, being committed, that they -- any bias be found
23 or at least searched for by the defense attorney.

24 Is that right?

25 A I agree with that.

Roger Poole - Cross-examination
by Mr. Rucker

1 Q Okay. Did you -- what time of day did this happen?

2 A I want to say in broad daylight.

3 Q Okay. Do you, do you recall any of the conversations
4 that the -- that you had with Mr. Ackbar about the
5 relationship he had specifically with the victim, alleged
6 victim or victim?

7 A I can't -- I don't recall right now, no, sir.

8 Q Okay. Did he ever talk to you about a self-defense
9 defense or an alibi defense back then?

10 A No, sir.

11 Q Did you have legal grounds to object to the sentence
12 that he -- that my client received as a result of being
13 convicted of murder?

14 A No, sir.

15 Q Okay. Did you file an appeal in the case?

16 A Yes, sir.

17 MR. RUCKER: Okay. No further questions.

18 MS. WHITE: Just briefly, Your Honor.

19 THE COURT: Redirect.

20 REDIRECT EXAMINATION

21 BY MS. WHITE:

22 Q Mr. Poole, in your standard practice, would you have
23 talked with Mr. Ackbar about the relationship, and I think
24 you might have said that and I'm just falling up because I'm
25 not even sure if it was answered, but the relationship

Roger Poole - Redirect examination
by Ms. White

1 between the various witnesses and himself and why they were
2 there that night or who they were?

3 A Yes.

4 Q Okay. And so you -- but you would also rely on
5 Mr. Ackbar to give you a lot of that information.

6 Is that right?

7 A Of course. Maybe the only source of the information---

8 Q Okay.

9 A ---available to me.

10 Q In regards to that, you said that you -- when you
11 talked with him a lot, he talked about inconsistencies.

12 Do you recall if you were able to get any direct
13 information that would indicate that there were any
14 conflicts between he and those, those folks?

15 And that might not be a clear question.

16 A I really don't know how to answer that.

17 Q Okay. And let me go back. I guess the State's theory
18 was that Mr. -- the victim in this case had given a
19 statement to police about an armed robbery that he was
20 involved in with---

21 A Okay.

22 Q ---the defendant, is that right?

23 A I'm with you, yeah.

24 Q Okay.

25 A Yes.

Roger Poole - Redirect examination
by Ms. White

1 Q So were you able to kind of glean information from
2 Mr. Ackbar as to why the State was saying he might of had
3 something to do with this or why maybe some others were
4 involved?

5 A I have the information that the, the victim in this
6 case might have been going to or have informed about
7 Mr. Ackbar's involvement in an armed robbery, and,
8 therefore, Mr. Ackbar's motive may have been to take out a
9 witness.

10 Q Okay. And that was the theory of the State's case
11 pretty much, wasn't it?

12 A That was the, the underlying silent theory.

13 Q Okay.

14 A It was not brought out in the Court.

15 Q Okay. So the armed robbery was never mentioned in
16 Court and that had been discussed prior to.

17 Is that right?

18 A That is correct.

19 MS. WHITE: Okay. All right. That's all I have, Your
20 Honor.

21 THE COURT: Recross.

22 MR. RUCKER: No, sir.

23 THE COURT: You may step down, Mr. Poole.

24 THE WITNESS: Thank you.

25 THE COURT: state wish to call additional witnesses?

Supreme Ackbar - Direct examination
by Mr. Rucker

1 MS. WHITE: No, Your Honor. The State would rest.

2 MR. RUCKER: Yes, sir, if I can, if I can have a
3 minute, I may can---

4 THE COURT: Yes, sir, I'll give you a moment to talk to
5 your client. Let me know if you wish, wish to offer any
6 additional testimony, sir.

7 (Pause.)

8 MR. RUCKER: Your Honor, I'd like to recall my client
9 just as rebuttal.

10 THE COURT: If you would, sir, come back to the stand.
11 (Witness complies.)

12 THE COURT: Sir, you're already under oath. You remain
13 under oath now.

14 Do you understand that?

15 THE WITNESS: Yes, sir.

16 THE COURT: Have a seat please.

17 MR. RUCKER: May it please the Court?

18 THE COURT: Yes, sir.

19 SUPREME ACKBAR, having been
20 previously sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. RUCKER:

23 Q Supreme, you heard the testimony of your trial counsel
24 just now?

25 A Yes, sir.

Supreme Ackbar - Direct examination
by Mr. Rucker

1 Q And you heard our -- my discussion -- my questioning
2 him about the witnesses and bias of the witnesses?

3 A Yes, sir.

4 Q And by -- and name each individual witness when you do
5 this, but what were the, what were the biases that the
6 witnesses had that you told Mr. Poole about?

7 A Well, Marcus Wright was motivated cause so -- cause he
8 wanted a lesser, a lesser time, a lesser sentence, a lesser
9 time.

10 My wife wanted custody of, of a daughter, you know, you
11 know.

12 S.K. , you know, to my knowledge, you know,
13 he, he, he, he could be involved in the, in the, in the
14 murder with S.K. , you know. They had plenty of theories.
15 I'm just a guy that they happened to, to be married to
16 Octavious. They don't know me like, like we friends. I
17 don't hang around them, been hang around them. I'm just
18 someone out of, out of -- from another county, moved up
19 here, married to Octavious. I'm, I'm, I'm expendable.

20 Q Did you talk with Mr. Poole about an alibi defense?

21 A I talked to Mr. Poole I don't have nothing to do with
22 this. This don't got nothing to do with me.

23 Q All right. Did he go over with you when it allegedly
24 happened?

25 A With what, what happened?

Supreme Ackbar - Direct examination
by Mr. Rucker

1 Q When the crime happened.

2 A He never went over me about the, about the crime.

3 Q All right. Did, did he talk to you about where you
4 might have been at the time?

5 A No, sir.

6 Q All right.

7 A He never even asked me. He never even asked me about,
8 about nothing.

9 MR. RUCKER: Okay. No further questions.

10 THE COURT: You wish to recross?

11 MS. WHITE: Just briefly, Your Honor.

12 THE COURT: Yes, ma'am.

13 CROSS-EXAMINATION

14 BY MS. WHITE:

15 Q Mr. Ackbar, at the time of the trial, at the time of
16 the, the stabbing, you were -- and Octavious were girlfriend
17 and boyfriend.

18 Is that right?

19 A No, we was married.

20 Q At the time of the trial you were married?

21 A At the time, at the time of this -- the crime happened
22 we were married.

23 Q Okay. Now, if the testimony says that you actually got
24 married I believe a month after the trial---

25 A No, ma'am, the testimony don't state that.

Supreme Ackbar - Cross-examination
by Ms. White

1 Q Okay. Hold on one second.

2 (Pause.)

3 Q In regards to an alibi, did you ever tell your attorney
4 that you were somewhere else and that you had an alibi
5 defense?

6 A I didn't tell him I had an alibi. I told him it don't
7 have nothing to do with me. I wasn't even there at the time
8 of the crime.

9 Q And that's what I'm asking you.

10 You said that---

11 A I ain't---

12 Q You told him you weren't there.

13 Did you tell him where you were?

14 A Did I tell him where, where I was?

15 Q Yes.

16 A I didn't---

17 Q For an alibi defense.

18 A I even told, told, told, told the, the lawyer when I
19 were, but I told him I have to take him there to where, to
20 where I was. Mr. Poole never even -- he never even, he
21 never even, he never even asked me about nothing about where
22 was I at the day of the crime or nothing.

23 Q Okay. You said -- hold on one second if I can, Your
24 Honor?

25 Hold on one second here.

Supreme Ackbar - Cross-examination
by Ms. white

1 (Pause.)

2 Q Okay. And you -- real quickly. And I was incorrect
3 when I said you were married after the trial. This was
4 actually -- you were married to Octavious about two months
5 prior to the stabbing?

6 A Yes, ma'am.

7 Q Okay. So you were married at the time she testified
8 against you?

9 A Yes, ma'am.

10 Q All right. And, again, you never tried to give an
11 alibi or talk to your attorney about the fact that you would
12 have a defense?

13 A To my, to my knowledge, according to Mr. Poole, the
14 State has to, has to prove -- burden of proving, proving the
15 case. So I elected to plead the Fifth. You know, to force
16 my Fifth Amendment right.

17 Q So you didn't want to have to testify or anything and
18 you wanted them to have to prove --?

19 A Yes, ma'am, when he spoke, when he spoke to me about
20 the burden of the State, that's when I say yeah, I don't
21 want to say nothing.

22 MS. WHITE: Okay. All right. Thank you. That's all
23 I've got, Your Honor.

24 MR. RUCKER: Nothing further, Your Honor.

25 THE COURT: You may step down.

1 All right. I'll hear from Petitioner's attorney.

2 MR. RUCKER: Your Honor, our position is that there was
3 a failure to truly investigate the case and to get into the
4 biases of the witnesses who clearly had some relationship
5 with my client including the ex-wife of my client.

6 Additionally, we rely on the previous -- the points we
7 discussed from the application, the inflammatory remarks to
8 the jury, the argument, the points made by the solicitor's
9 Office, the solicitor, and there -- the issue as to the
10 vouching of the credibility of Marcus Wright by the State.

11 Those, those are our issues.

12 THE COURT: Yes, ma'am.

13 MS. WHITE: Thank you, Your Honor.

14 The State would argue that Mr. Ackbar has failed to
15 meet his burden of proof of establishing that there was any
16 notable bias by any of the witnesses or that counsel failed
17 to investigate, that he could of found anything that would
18 of affected the outcome of this trial.

19 There were eye witnesses that placed him at the scene
20 that also testified as to his stabbing the victim. There
21 were other pieces of evidence that placed him there that
22 they were able to, to, to show as well as the eye witness
23 testimony.

24 The jury took 30 minutes to convict him. So the State
25 would argue it's an overwhelming evidence case, and that he

1 failed to meet his burden of proof that anything would of
2 affected the outcome.

3 THE COURT: All right. I'll take the matter under
4 advisement.

5 Thank you very much.

6 MR. RUCKER: Thank you, Your Honor.

7 MS. WHITE: Thank you, Your Honor.

8

9

10 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

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2
3 I, Pamela E. Green, Official Court Reporter for the
4 Seventh Judicial Circuit of the State of South Carolina, do
5 hereby certify that the foregoing is a true, accurate and
6 complete Transcript of Record of the proceedings had and
7 evidence introduced in the trial of the captioned case,
8 relative to appeal, in the Court of Common Pleas Nonjury for
9 Spartanburg County, South Carolina, on the 15th day of
10 September, 2014.

11 I do further certify that I am neither of kin, counsel
12 nor interest to any party hereto.

13
14
15
16 July 11th, 2015

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18
19 

20
21 PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG)	
)	
)	2012-CP-42-4987
Supreme Raheem Ackbar, #275886,)	
)	
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 December 4, 2012, and amendment on January 25, 2013. The Respondent made its Return on or about March 19, 2014. An evidentiary hearing into the matter was convened on September 15, 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.

2015 MAR 27 AM 8:45
 H. HOPE BLACKLEY
 CLERK OF COURT
 SPARTANBURG COUNTY

At the hearing, the Applicant testified on his own behalf. J. Roger Poole, 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 June 2009 term of the Spartanburg County Grand Jury for murder (2009-GS-42-5943). The Applicant was represented by J. Roger Poole, Esquire. On February 9, 2011, the Applicant



proceeded to trial, where he was convicted by a jury. The Honorable J. Derham Cole sentenced Applicant to life.

A timely notice of appeal and Anders brief were filed on Applicant's behalf. Applicant also filed a *pro se* brief in support of his appeal. The South Carolina Court of Appeals dismissed the appeal. State v. Ackbar, Op. No. 2012-UP-521 (filed September 12, 2012). After reviewing a letter from the Applicant and his *pro se* petition for rehearing, the Court of Appeals denied the petition on October 17, 2012. The Remittitur was returned on November 29, 2012.

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 deprived Applicant of his Sixth Amendment right to effective counsel by engaging in intrinsic fraud with the State,
 - ii. Counsel failed to fully disclose Brady material,
 - iii. Counsel failed to object to the State's failure to properly serve Applicant for the charge of murder,
 - iv. Counsel failed to object and make a motion to quash the indictment,
 - v. Counsel failed to object to perjury,
 - vi. Counsel failed to object to the trial judge not making impartial findings of fact and conclusions of law,
 - vii. Counsel failed to object to the jury charge,
 - viii. Counsel failed to make a motion for directed verdict,
 - ix. Counsel failed to move to suppress evidence based upon an illegal search and seizure,
 - x. Counsel failed to raise a meritorious argument that Applicant was illegally seized and that the evidence was

M. HOPE BLACKLEY

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SPARTANBURG COUNTY

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obtained because of unlawful
detainment.

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 in the application and 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 174, 176 (2003) (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).

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Spartanburg County
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M. HOPE BLACKLEY

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, 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).

Counsel testified that at the time of trial, he had practiced law for over 31 years, with a substantial amount of his practice spent practicing criminal law. Counsel testified that he began representing the Applicant in mid-2010. Counsel testified that he started going to see the Applicant monthly in 2010 and went several times in December 2010. Counsel testified that he and the Applicant had some communication problems, which led to the Applicant filing a motion to relieve Counsel in January 2011.

During their meetings, Counsel testified that he and the Applicant discussed Applicant's wife's motives for testifying against Applicant, content of witness statements, and relationship of Applicant and various witnesses. Counsel testified that he sent a letter to Applicant about the roles of both Counsel and Applicant in preparing a defense, as well as discussing trial strategy and the ultimate objective. Counsel testified that the Applicant never discussed a defense of self-defense or alibi with Counsel. Counsel testified that the first time he heard that the Applicant was not even present at the location of the stabbing was at the PCR hearing.



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 SPARTANBURG COUNTY
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 M. HOPE BLACHELEY

Counsel engaged in intrinsic fraud with the State and

Counsel failed to fully disclose Brady material

The Applicant testified that Counsel failed to turn over discovery materials. A hearing was held approximately a week prior to trial, at which point Applicant moved to relieve Counsel based upon the fact that he believed Counsel was withholding evidence. Applicant alleged that he had requested copies of phone recordings, but had never received them. Applicant further testified that Counsel tried to mislead Applicant about the evidence and phone records. During the hearing on Applicant's motion to relieve and at the PCR hearing, it was clear that Counsel had the information requested by Applicant, but was unable to review the information with the Applicant because of Applicant's desire to relieve Counsel at a prior appointment. Counsel testified that the discovery materials included documents showing phone calls, but the information was solely the phone numbers and times, not the actual messages.

In evaluating post-trial Brady claims, the Applicant must show that (1) the prosecution suppressed evidence, (2) the evidence would have been favorable to the accused, and (3) the suppressed evidence is material. United States v. Wolf, 839 F.2d 1387 (10th Cir. 1988). A Brady violation does not warrant reversal if the evidence is merely cumulative or impeaching. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993). "Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Id., 434 S.E.2d at 268.

This Court finds that there is no merit to the assertion that Counsel was involved in fraud with the State or withheld discovery materials from the Applicant. This Court finds Counsel's testimony to be most credible as to the lack of existence of any documents regarding phone calls and their contents. Furthermore, this Court finds no evidence of a Brady violation.

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M. HOPE BLACKLEY
CLEVELAND COUNTY
SPARTA TOWN

*Counsel failed to object to the State's failure to properly serve Applicant for charge of murder,
failed to object to and make motion to quash indictment*

Applicant testified that he was never served with a warrant on the charge of murder; therefore, Counsel should have objected to and moved to quash the indictment. Further, the Applicant testified that Counsel should have moved to quash the indictment because the language of the indictment indicated that the victim was killed by "stabbing and/or cutting . . . with a large fixed blade hunting knife," but a knife was never introduced as evidence. Applicant testified that this entitled him to an acquittal.

This Court finds that these allegations lack merit. Counsel would have had no legal basis on which to object to the failure of the arresting officer to properly serve the Applicant with the arrest warrant. Applicant had been properly arrested on a prior armed robbery. The South Carolina Supreme Court has held that an officer is authorized to make a warrantless arrest based upon his knowledge that a valid arrest warrant has been issued against a defendant. State v. Grate, 310 S.C. 240, 242, 423 S.E.2d 119, 120 (1992). Furthermore, there is no legal basis for Counsel to object to the indictment. An indictment for murder is sufficient "if the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, the defendant to know what he is called upon to answer, and if an acquittal or conviction thereon may be pleaded as a bar to any subsequent prosecution." Winns v. State, 363 S.C. 414, 418, 611 S.E.2d 901, 903 (2005) (citing Joseph v. State, 351 S.C. 551, 561, 571 S.E.2d 280, 285 (2002)).


CLERK OF COURT
SPARTANBURG COUNTY
M. BOPE-BLACKLE
2015 MAR 27 AM 8:55

Counsel failed to object to perjury

Applicant testified that Counsel failed to properly impeach witnesses when they testified and committed perjury. Applicant testified that Counsel failed to impeach Octavia Burnside, Marcus Wright, S.K. and Investigator Loren Williams. Applicant also testified that Counsel failed to cross-examine witnesses as to possible biases against Applicant. Applicant testified that Marcus Wright testified against Applicant because he wanted a deal for lesser-time, while Octavia Burnside wanted custody of her children with Applicant. Applicant surmised that S.K. could have been involved in the stabbing, which is why he testified and blamed Applicant.

Applicant testified that there was no evidence to support the testimony that Applicant was in the car with Marcus Wright. Further, Applicant testified that there was exculpatory evidence of blood on the passenger side door of the car with Wright's fingerprint in the blood. Applicant testified that Counsel should have objected when Octavia Burnside, Applicant's ex-wife, testified because of hearsay. Applicant acknowledged that Counsel objected to some testimony by Ms. Burnside, but was overruled by the trial court. Applicant also testified that Counsel should have objected to S.K.'s testimony that he saw Applicant stab the victim because the testimony was contradictory.

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 the burden of proof. The nature and scope of cross-examination is inherently a matter of trial 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 . . .


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CLEAN OF COURT
 SPARTANBURG COUNTY
 2015 MAR 27 AM 8:45
 M. HOPE BLACKLEY

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. Accordingly, the Applicant has not shown that a different approach to cross-examination would have been beneficial to the defense.

Counsel failed to object to the trial judge not making impartial findings of fact and conclusions of law

This Court finds that the Applicant has voluntarily abandoned this claim. Although raised in his application, the Applicant offered no testimony or evidence in support of this allegation at his hearing. Therefore, this claim is denied and dismissed.

Counsel failed to object to the jury charge

The Applicant alleged that Counsel was ineffective for failing to object to the court's charge regarding the murder. Applicant testified that the charge focused on reasonable doubt, but Counsel should have objected to the murder charge; however, Applicant failed to specify which portions of the charge he believed were improper. This Court finds no legal basis for objecting to the jury charge regarding murder and cannot find Counsel deficient in failing to object. Therefore, this Court finds that the Applicant has failed to meet his burden of proof on this claim and it is denied and dismissed.

Counsel failed to move for directed verdict

This Court finds that there was no evidence that Counsel was deficient in any way relating to a failure to make a motion for directed verdict. The Applicant did not demonstrate that a motion would have made an outcome in his trial, so this claim is denied and dismissed.



M. HOPE BLACKLEY
 2015 MAR 27 AM 8:45
 CLERK OF COURT
 SPARANBURG COURT

Counsel failed to move to suppress evidence based upon illegal search and seizure and argue that Applicant himself was illegally seized during an unlawful detention

Applicant testified that he was illegally detained as a result of an armed robbery warrant and was never served with a warrant for murder. Applicant also testified that the police took evidence from Octavia Burnside's truck and their home, but Applicant believes the evidence was seized illegally because the police did not have probable cause to take the truck or search their home. The record reflects that the State introduced photos of a blue latex glove, backpack with Kel-Tec 9mm handgun, and M-tech knife sheath, all items found in the truck. The State also later introduced, over Counsel's objection, the actual items. The State also presented a package of open blue latex gloves found behind the home.

Counsel testified that he was aware of the search of the truck and home, but saw no legal basis to object because Applicant had no proprietary interest in either. The truck was owned by Octavia Burnside and there appeared to be a valid search warrant to search the truck and the home, which was in Ms. Burnside's name. Counsel did object to the introduction of the actual items from the truck because the photographs had already been introduced, but the objection was overruled.

Regarding Applicant's allegation that Counsel failed to object to the probable cause of Applicant's arrest, this Court finds that this allegation lacks merit and this Court finds that Applicant has failed to meet his burden of proof as to this claim. This Court finds that the Applicant failed to offer any evidence to show that the arrest warrant relating to a prior armed robbery was invalid. Accordingly, this Court finds that the Applicant has failed to meet his burden of proof as to this claim and failed to establish that the outcome of his trial would have been different had Counsel made any motion or attack regarding the arrest warrant.

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Page 9 of 11

CLERK OF COURT
SPARTANBURG COUNTY
2015 MAR 27 AM 8:46
J. HOPE BRADLEY

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. The Applicant has failed to meet his burden of proof as to all claims.

Summary

This Court finds in regards to the allegations 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 Frasier supra. Therefore, this allegation is denied.

P.L.
1/10

2015 MAR 27 AM 8:46
CLEAN OFFICE
SPARTANBURGH COUNTY
HOPE BLOOMING

CONCLUSION

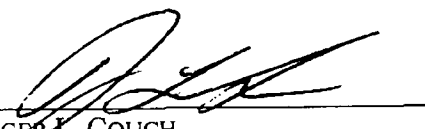
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

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 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), SCRPC, 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, 2014. ¹⁵



 ROGER L. COUCH
 Presiding Judge

M. HOPE BRACKLEY

2015 MAR 27 AM 8:46

CLERK OF COURT
SPARTANBURG COUNTY

Spartanburg County

Spartanburg County Court House
180 Magnolia Street
P. O. Box 3483
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Phone (864) 596-2591
Fax (864) 596-2239



M. Hope Blackley
Clerk of Court

March 30, 2015

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

7TH JUDICIAL CIRCUIT

Supreme Rakes Center
Applicant # 21586

CASE # D12CP42 4987

VS
Steel
Respondent

CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of the Order of Dismissal
In this action dated 3/26, 2015 on 3-30-15

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Sarae White
Ashley Hanes
John Rucker

3-30-15
(Date)

Corrie Gray
(Signature)

DOCKET NO. **19GS425943**

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

WARD BUTCHERS

COURT OF GENERAL SESSIONS

NOV 30 2019

TERM

THE STATE
vs.

Supreme Ackbar

Indictment for

MURDER

SC Code 16-03-0010, 0020

CDR Code 116

Class FEL-EXM

WITNESSES

1. RETURNED

2. RETURNED TO Spartanburg County Sheriff's Office

ARREST WARRANT NUMBER

M089645

ACTION OF GRAND JURY

[Signature]
Foreperson of Grand Jury
Date: 2/24/09

VERDICT

GUILTY

[Signature]
Foreperson of Petit Jury
Date: 2/19/09

