

KENNEDY|Brannon, PA

RECEIVED

Thursday, May 19, 2016

MAY 23 2016

VIA Regular Mail

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211

S.C. SUPREME COURT

**RE: Dantae Stukes (SCDC No. 350166) v. State of South Carolina
2014-CP-23-1295**

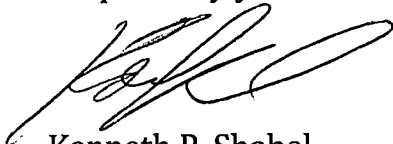
Dear Ms. Kitchings:

I represent Mr. Dantae Stukes, who is wishing to appeal the Order denying him Post-Conviction Relief. Please find enclosed the following documents and items:

- (a) An original and six (6) copies of the Notice of Appeal
- (b) An original and one (1) copy of Proof of Service of the Appeal
- (c) Orders from Judge Hall filed March 30, 2016 and April 28, 2016
(from which this appeal stems)
- (d) One copy of a letter to Cheryl Smith, Court Reporter, requesting the transcript
- (e) Check for \$100.00 for filing fee
- (f) Self-addressed stamped envelope for Return

Do not hesitate to contact me if you have any additional questions or need additional documents.

Respectfully yours,



Kenneth P. Shabel
Attorney at Law

cc: Karen C. Ratigan, Assistant Attorney General

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Daniel D. Hall, Circuit Court Judge

Case No. 2014-CP-23-1295

Dantae Raheev Stukes
(SCDC #350166),

Appellant

RECEIVED

MAY 23 2016

v.

State of South Carolina,

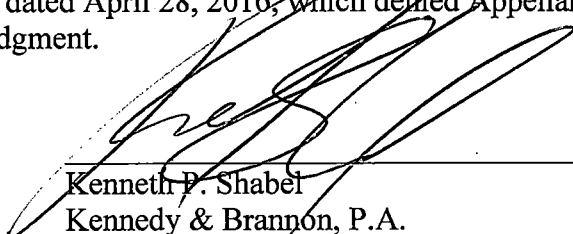
Respondent.

S.C. SUPREME COURT

NOTICE OF APPEAL

Dantae Raheev Stukes appeals the Order denying and dismissing his application for Post-Conviction Relief. The Order was filed on March 30, 2016. This appeal is further taken from the order of the Honorable Daniel D. Hall dated April 28, 2016, which denied Appellant's Motion for Reconsideration and Relief from Judgment.

May 19, 2016


Kenneth P. Shabel
Kennedy & Brannon, P.A.
Post Office Box 3254
Spartanburg, SC 29304
(864) 707-2020
Fax: (864) 707-2030
Attorney for Appellant

Other Counsel of Record:
Karen C. Ratigan
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Daniel D. Hall, Circuit Court Judge

Case No. 2014-CP-23-1295

Dantae Raheeve Stukes
(SCDC #350166),

Appellant

v.

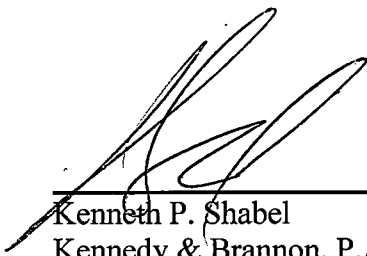
State of South Carolina,

Respondent.

PROOF OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal was served upon all counsel of record and/or unrepresented parties by U.S. Postal Service first class mail, postage prepaid, on May 19, 2016 to the address as follows:

Karen C. Ratigan
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737
Attorney for Respondent



Kenneth P. Shabel
Kennedy & Brannon, P.A.
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Spartanburg, SC 29304
(864) 707-2020
Fax: (864) 707-2030
Attorney for Appellant

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

JUDGMENT IN A CIVIL CASE
CASE NO: 2014CP2301295

FILED-CLERK OF COURT
GREENVILLE, S.C.
PAUL B. WICKENSIMER
2016 MAR 30 PM 2:02

Dantae R Stukes vs. South Carolina State Of

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.
- ACTION DISMISSED (CHECK REASON):**
SCRCP (Vol. Nonsuit); Rule 12(b), SCRCP; Rule 41(a),
 Rule 43(k), SCRCP (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):**
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other: _____
 Rule 40(j) SCRCP; Bankruptcy:
- 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; Statement of Judgment by the Court:
Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE - Daniel D Hall

This judgment was entered on the , and a copy mailed first class this , to attorneys of record or to parties (when appearing pro se) as follows:

Kenneth Philip Shabel PO Box 3254 Spartanburg,
SC 29304

Karen Christine Ratigan PO Box 11549 Columbia,
SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Dantae Raheev Stukes,)
 S.C.D.C. No. 350166,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2014-CP-23-1295

ORDER OF DISMISSAL

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENSIMMER
 2016 MAR 30 PM 2 02

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 7, 2014. The Respondent made its return on October 30, 2014. An evidentiary hearing was held on February 16, 2016 at the Greenville County Courthouse. The Applicant was present and represented by Kenneth P. Shabel, 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 were Naheem Brown and the Applicant's trial and appellate counsel, George R. McElveen, III, Esquire. The Court had before it the trial transcript, the Greenville County Clerk of Court records, the South Carolina Department of Corrections records, the PCR application, the return, and the appellate records.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the August 2010 term of the Greenville County Grand Jury for second-degree criminal sexual conduct with a minor (2010-GS-23-6454). He was represented by George R. McElveen, III,

Esquire.

After the State called the case to trial, the Applicant was found guilty. On March 15, 2012, the Honorable C. Victor Pyle, Jr. sentenced the Applicant to 15 years imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. Mr. McElveen perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentence. State v. Stukes, Op. No. 2014-UP-027 (S.C. Ct. App. filed Jan. 22, 2014). The Remittitur was sent on February 7, 2014.

ALLEGATIONS

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

1. Ineffective assistance of trial counsel:
 - a. Failed to object to victim's inconsistent testimony.
 - b. Failed to object to hearsay testimony.
 - c. Failed to obtain state's witnesses' criminal history for potential impeachment.
2. Ineffective assistance of appellate counsel:
 - a. Failed to raise preserved errors on direct appeal.

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. 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 counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). 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 v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

The Applicant stated he had three meetings with trial counsel and that they had numerous phone calls. The Applicant stated they reviewed the discovery materials and the victim’s two statements. The Applicant stated trial counsel did not do an adequate job of impeaching the victim’s testimony with her statements. The Applicant stated trial counsel should have objected when the State’s witnesses testified as to what the victim told them about the abuse and that it happened at the Applicant’s house. The Applicant stated trial counsel should have known before the trial that no rape protocol had been performed on the victim. The Applicant stated trial counsel should have objected to several elements of the State’s closing argument.

Naheem Brown stated he knew the Applicant from church and often went out with him on Thursday and Friday nights. Brown stated, however, that he could not recall if they were together every Thursday and Friday night.

Trial counsel testified he had several in-person and telephone meetings with the

Applicant. Trial counsel testified they reviewed the discovery materials, the elements of the charge, and the sentencing range. Trial counsel testified they also reviewed the Applicant's version of events and his interactions with the victim. Trial counsel testified it was difficult to argue an alibi defense because the range of time was so broad and the victim could not identify a specific date. Trial counsel testified that, regardless, they presented at trial that the Applicant's work and travel habits cast doubt upon the victim's testimony. Trial counsel testified he knew prior to the Applicant's trial that there had been no rape protocol done in this case. Trial counsel testified that, given the delay in reporting, it would have been unlikely for one to have been performed. Trial counsel confirmed the assistant solicitor was "aggressive" regarding the reasonable doubt standard in her closing argument. Trial counsel testified it was common for the State to paint a defendant (and his witnesses) in a bad light while painting State witnesses in a good light.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have better impeached the victim with her statements. Trial counsel testified the victim could never pinpoint a date (or day of the week) the abuse occurred. Trial counsel testified, however, that the victim was a solid witness at trial. This Court notes trial counsel did, in fact, impeach the victim with her two prior statements. (Trial transcript, pp.101-02). It is clear from the record that trial counsel had to walk a fine line at trial in order to point out the discrepancies in the victim's testimony while keeping in mind that she was a minor and the victim of a sexual assault. This Court finds the Applicant has failed to show either that trial counsel was deficient in his cross-examination of the victim or that further impeachment of the victim would have affected the outcome of his case. See Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (holding that, in a post-conviction relief proceeding, the applicant bears the burden of proving

the allegations in their application).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to testimony from the victim's god-sister and school friends. The Applicant argued this testimony was improper. This Court has examined the trial transcript, however, and finds that testimony from JT, RD, and DW was not improper because it did not identify the Applicant as the assailant and did not exceed the time-and-place limitation. (Trial transcript, pp.107-10; pp.114-18; pp.123-27). As such, the Applicant failed to demonstrate trial counsel's performance was deficient. This Court also finds the Applicant has failed to demonstrate he was prejudiced by the lack of objection to this testimony. See Butler v. State, 286 S.C. at 442, 334 S.E.2d at 814.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have known before trial that a rape protocol was not performed on the victim. Trial counsel testified, however, that he knew prior to the Applicant's trial that a rape protocol had not been performed on the victim regarding this charge. This Court finds trial counsel's testimony is credible and that the Applicant failed to prove trial counsel's performance was deficient. This Court further finds the Applicant failed to demonstrate he suffered any prejudice. Trial counsel testified the delay in reporting meant a rape protocol would be unlikely. Further, the Applicant failed to articulate what line of questioning or investigation trial counsel could have pursued on this issue that would have affected the outcome of his trial. See Cherry v. State, 300 S.C. at 117-18, 386 S.E.2d at 625.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected during the assistant solicitor's closing argument. First, the Applicant argued the assistant solicitor improperly referred to the concept of reasonable doubt as "a scare tactic." This

Court has examined the trial transcript, however, and notes trial counsel did object to this statement and was overruled. (Trial transcript, p.314). Second, the Applicant argued the assistant solicitor said he and his wife were liars. This Court has examined the trial transcript and finds that, while the assistant solicitor cast doubt upon the credibility of their testimony, she did not say anything objectionable or improper. (Trial transcript, pp.310-11). See State v. Pipkin, 359 S.C. 322, 327, 597 S.E.2d 831, 833 (Ct. App. 2004) (noting the jury is “the finder of fact and weigher of credibility”). Third, the Applicant argued the assistant solicitor bolstered the credibility of the victim and the State’s witnesses. This Court has examined the trial transcript and finds there was no error that would have necessitated an objection from trial counsel. The assistant solicitor said the testimony from the State’s witnesses showed it “is very possible for this to have happened to [the victim]” and that the victim’s reaction to the assault was “plausible and possible,” and that the victim’s story was consistent. (Trial transcript, pp.300-12). This Court finds none of these statements bolstered the State’s witnesses’ credibility and, as such, trial counsel was not deficient in not making an objection. See Gilchrist v. State, 350 S.C. 221, 227, 565 S.E.2d 281, 285 (2002) (“Improper vouching occurs when the prosecution places the government’s prestige behind a witness by making explicit personal assurances of a witness’ veracity. . . .”); Matthews v. State, 350 S.C. 272, 276, 565 S.E.2d 766, 768 (2002) (“A solicitor may argue the credibility of the State’s witnesses if the argument is based on the record and its reasonable inferences.”). Further, this Court finds the Applicant has failed to demonstrate – in all three allegations related to the assistant solicitor’s closing argument – that he suffered any prejudice.

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 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 trial counsel’s performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

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

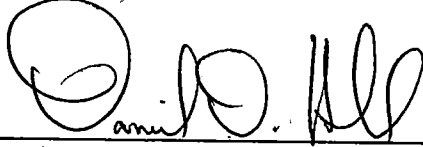
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel’s representation. Therefore, this 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 appropriate 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 8th day of March, 2016.



Daniel D. Hall
Presiding Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-23-1295

Dante F. Stukes

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

ENTERED COMPUTER

Submitted by: Kenneth P. Shabel	Attorney for : <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or
	<input type="checkbox"/> 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 Motion to Reconsider denied
- 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: Motion to Reconsider is denied

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.

Dante F. Stukes
 Circuit Court Judge

2753
 Judge Code

4-28-16
 Date

KENNEDY|Brannon, PA

Thursday, May 19, 2016

VIA Regular Mail

Ms. Cheryl Smith
Court Reporter
Post Office Box 80032
Simpsonville, SC 29680

**RE: Dantae Stukes (SCDC No. 350166) v. State of South Carolina
2014-CP-23-1295**

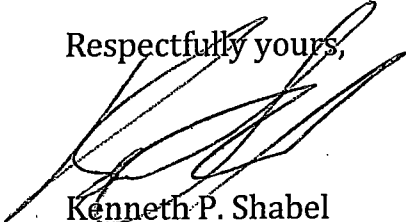
Dear Ms. Smith:

On February 16, 2016, the above case was tried before the Honorable Daniel D. Hall, Circuit Court Judge, in Greenville County. My records indicate that you were the court reporter for this case.

My client wishes to appeal the Court's decision. Therefore, I request that you provide me with a transcript of the proceedings. Please transcribe the entire record. I agree to pay the per page charge for this transcript as provided by Rule 607, SCACR. If you are able to provide an estimated cost of the transcript, please let me know so that we may arrange payment with you.

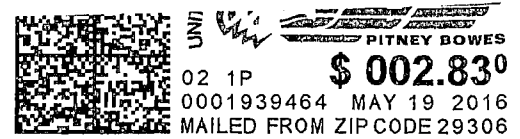
Do not hesitate to contact me if you have any additional questions or need additional information.

Respectfully yours,



Kenneth P. Shabel
Attorney at Law

cc: Karen C. Ratigan, Assistant Attorney General
S.C. Court Administration
Clerk, South Carolina Supreme Court



First Class Mail

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229 Magnolia St.
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Spartanburg, SC 29306

TO: The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211

