

VOLUME II OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

Brooks P. Goldsmith, Circuit Court Judge

RECEIVED

SEP 07 2016

S.C. SUPREME COURT

ROOSEVELT ANTHONY REAVES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002325

APPENDIX

KATHRINE H. HUDGINS
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

JESSICA KINARD
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEXi

TRIAL TRANSCRIPT VOLUME I (dated April 11-13, 2011)1

TRIAL TRANSCRIPT VOLUME II (dated April 11-13, 2011)136

TRIAL TRANSCRIPT VOLUME III (dated April 11-13, 2011).....365

INDICTMENT AND SENTENCING SHEET442

APPLICATION FOR POST-CONVICTION RELIEF.....445

RETURN454

AMENDMENT TO APPLICATION FOR POST-CONVICTION RELIEF.....461

POST-CONVICTION RELIEF HEARING TRANSCRIPT (dated April 2, 2015).....462

POST-CONVICTION RELIEF HEARING TRANSCRIPT (dated April 20, 2015).....506

ORDER OF DISMISSAL524

1 A Yes.

2 Q And you -- you objected to that; is that correct?

3 A Right.

4 Q Okay. What about that question caused you to object?

5 A You're talking about line 24 on page 300?

6 Q Yes, sir.

7 A Well, the solicitor asked -- and specifically in terms
8 of -- she asked specifically about the methods that were
9 used to assault her. And what she's asking there is she's
10 asking the nurse what did the victim tell you about the
11 methods that were used to assault her. And 801(d) provides
12 the hearsay exception for sexual assault victims, people
13 who -- who've received narratives from sexual assault
14 victims.

15 But they're only allowed to testify to what they were
16 told in terms of time and place. So she's able to say
17 victim told me it happened at her apartment on this day at
18 this time.

19 That's my reading of the rule. And I objected under
20 801(d). It's actually 801(d)(1)(D), I believe.

21 Q So you thought that that testimony and -- was
22 impermissible hearsay?

23 A Yes.

24 Q Okay. There was quite a bit following that about --
25 from Ms. Hart about what the victim told her; is that

1 correct?

2 A Yes.

3 Q Okay. And you felt that all of that was
4 impermissible?

5 A Anything outside of time and place, yes.

6 Q Okay.

7 MR. WALLER: I have no further questions, Your Honor.

8 MR. MITCHELL: Nothing in redirect.

9 THE COURT: All right. Thank you, sir. You may step
10 down.

11 THE WITNESS: Thank you, Your Honor.

12 (Whereupon, the witness exited the witness stand.)

13 THE COURT: May the witness be excused?

14 MR. WALLER: Yes, Your Honor.

15 MR. MITCHELL: Yes, Your Honor.

16 THE COURT: All right.

17 MR. MITCHELL: The state has no further witnesses.

18 THE COURT: All right. Anything in reply? At the ---

19 MR. WALLER: Nothing ---

20 THE COURT: At this time?

21 MR. WALLER: --- today, Your Honor. We -- we will
22 call -- certainly call Mr. Alexander when we reconvene this
23 hearing.

24 THE COURT: All right. Help me understand exactly
25 where applicant is going to -- well, let me back up. As to

1 1(a) of the amended application ---

2 MR. WALLER: Yes, sir.

3 THE COURT: --- are you -- you've already presented it
4 -- all the evidence you would present on that?

5 MR. WALLER: Yes, sir.

6 THE COURT: And what evidence was it? That's what I'm
7 missing.

8 MR. WALLER: There were the -- there were a group of
9 pictures.

10 THE COURT: Right.

11 MR. WALLER: Certain pictures were enhanced with a --
12 with a dye.

13 THE COURT: Right.

14 MR. WALLER: They were ---

15 THE COURT: Right.

16 MR. WALLER: --- not a -- a natural state.

17 THE COURT: But didn't they challenge that?

18 MR. WALLER: They -- they -- my argument is that they
19 challenged it incorrectly. They argued under Rule 403,
20 Your Honor. And I believe they should have -- I believe
21 they should've objected to it under Rule 1001, Subsection
22 2. And there is two case -- two cases I have that I will
23 present to the Court in an argument.

24 THE COURT: I see. Okay. All right. All right. Is
25 there anything else we're going to do on this case until we

1 regroup?

2 MR. WALLER: I don't believe so.

3 MR. MITCHELL: No, sir, Your Honor.

4 THE COURT: All right. We're going to continue this
5 case until another date to take testimony of appellate
6 counsel, Alexander.

7 MR. WALLER: Your Honor, I can pass up copies of those
8 cases if Your Honor would like in -- in advance.

9 THE COURT: Okay. Do you have -- do you have copies?

10 MR. WALLER: Yes, sir, I do.

11 THE COURT: All right.

12 (Whereupon, Mr. Waller and Mr. Mitchell conferred.)

13 THE COURT: Therefore, we're in recess until 1:30.

14 MR. MITCHELL: Thank you, Your Honor.

15 (Whereupon, the proceeding was adjourned at 11:54 a.m.)

16 --- END OF TRANSCRIPT OF RECORD ---

17

18

19

20

21

22

23

24

25

CERTIFICATE

I, THE UNDERSIGNED MARYANN S. NEVERS, CERTIFIED
VERBATIM REPORTER - MASTER, CERTIFICATE OF MERIT,
OFFICIAL COURT REPORTER FOR THE EIGHTH JUDICIAL
CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY
CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND
COMPLETE TRANSCRIPT OF RECORD IN THE HEARING OF THE
CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT
COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 2ND
DAY OF APRIL, 2015.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



MARYANN S. NEVERS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

JANUARY 18, 2016

1 State of South Carolina)
 2 County of Richland)
 3)
 4 Roosevelt Reaves,)
 5 Applicant,)
 6 vs.)
 7 State of South Carolina,)
 8 Defendant.)

In the Court
 Of Common Pleas
 Indictment No.: 2014-CP-40-00562

Transcript of Record

April 20, 2015

Lexington, South Carolina

BEFORE:

The Honorable Brooks P. Goldsmith, Judge

APPEARANCES:

Jonathan D. Waller, Esquire
 Attorney for the Applicant

Clay Mitchell, Assistant Attorney General
 Attorney for the Defendant

	INDEX	
		PAGE
1		
2		
3	DAVID ALEXANDER	
4	Direct Examination by Mr. Waller	5
5	Cross Examination by Mr. Mitchell	9
6		
7	Certificate of Reporter	18
8		
9		

	EXHIBITS	
	NO. DESCRIPTION	PAGE
10		
11		
12	NONE	
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 Thereupon, the following proceedings were had,

2 THE COURT: Good morning, ladies and gentlemen.

3 Please be seated. Let's go ahead.

4 MR. MITCHELL: May it please the Court. This is
5 Roosevelt Reaves versus the State of South Carolina.
6 Case number 2014-CP-40-00562. Mr. Reaves filed this
7 application for post conviction relief on January 30th of
8 2014. This is a Richland County case. Your Honor
9 retained jurisdiction on it after a hearing on April 2nd,
10 2015 at the PCR term of Richland County. We held it open
11 to call appellate counsel as a witness as he was
12 unavailable that week so we are here today on that. To
13 recap the hearing a bit to refresh Your Honor's memory,
14 Mr. Reaves testified that, I believe, the allegations
15 that he went forward on are failure to challenge on four
16 or five photographs that were admitted into evidence and
17 improper corroboration testimony and then ineffective
18 assistance of appellate counsel and we are here today to
19 call Mr. David Alexander who was appellate counsel on the
20 case. Mr. Reaves' other attorney Mr. Charlie Cochran
21 testified at the previous hearing and we're here today to
22 go forward on that and I'll let Mr. Waller speak on that
23 for a second.

24 THE COURT: Mr. Waller.

25 MR. WALLER: Yes, sir, Your Honor. Your Honor, it

1 would probably be best if the Court would question my
2 client about waiving venue to Lexington County for
3 purposes of finishing this hearing, if that's --

4 THE COURT: Well, we started the hearing and wasn't
5 it your client's request that we continue the hearing to
6 hear it over here?

7 MR. WALLER: Yes, sir. That's fine. That's fine,
8 Your Honor. Your Honor, Mr. Mitchell is correct. We
9 postponed the ending of it to call Mr. Alexander who was
10 out of the country. Your Honor, Mr. Alexander was the
11 appellate counsel. Applicant amended his application to
12 include an allegation of ineffective assistance of
13 appellate counsel in that Mr. Alexander failed to raise
14 an issue on appeal that we feel is meritorious. That
15 issue is that the nurse examiner Ms. Templehart testified
16 outside of, getting improper corroboration testimony over
17 a timely objection that was outside the time and place of
18 the alleged sexual assault.

19 THE COURT: All right.

20 MR. WALLER: Your Honor, at this time I would call
21 David Alexander.

22 THE COURT: How you doing, sir?

23 MR. ALEXANDER: I'm well, Your Honor.

24 Thereupon,

25 DAVID ALEXANDER

1 after having been first duly sworn, testified as follows,

2 DIRECT EXAMINATION

3 BY MR. WALLER:

4 Q. Mr. Alexander, how are you?

5 A. I'm well.

6 Q. If you could, please, just tell us a little bit
7 about how you get involved with a case at appellate defense?

8 A. Once the transcript is received from a court
9 reporter, the chief appellate defender assigns the cases and
10 that's when the appellate defenders begin representation.

11 Q. How long have you been at appellate defense?

12 A. Since May of 2012.

13 Q. About how many open cases do you have?

14 A. Right now probably 120.

15 Q. How many do you get on an average week?

16 A. How many new cases?

17 Q. Yes, sir.

18 A. They come very sporadically. It would be hard to
19 say.

20 Q. When you do get involved in the case, what's the
21 process you go through in developing the case for the
22 appeal?

23 A. The first thing I do is I look at the transcript and
24 try to make sure it's complete. I try to see what exhibits I
25 need. I order those exhibits. We have someone in our office

1 that does that for us with the Clerk of Court and trial
2 counsel and then basically assuming that everything is
3 complete, it basically gets put on a shelf while I wait to get
4 to the case. Because of the case load really the only fair
5 way I found to do is it to put everybody in line until I can
6 get to the case. Then when I get to the case, I read it and
7 do the research and write the brief.

8 Q. Okay. In this case did you, once you obtained the
9 transcript, did you order some exhibits?

10 A. I believe I did.

11 Q. What exhibits did you order?

12 A. I can't tell you for sure what all exhibits that I
13 ordered but I know I ordered photographs.

14 Q. Okay. If you could describe what you saw in the
15 photographs?

16 A. Uhm, the photographs were quite graphic. They were
17 photographs of the complainant's genitalia. We raised that
18 issue on appeal. Many of them were very close up. I remember
19 in some of them the nurse's fingers were visible inside the
20 complainant's genitalia.

21 Q. When you say close up, what do you mean?

22 A. I don't see how you can get much closer.

23 Q. Okay. In reading the transcript, did you have a
24 chance to review the transcript before you came today?

25 A. I reviewed parts of it.

1 Q. In reviewing the transcript the pictures were
2 presented to the jury in a large fashion, is that your
3 recollection?

4 A. My recollection is what was admitted into evidence
5 were 8 by 10's and then the Solicitor subsequently blew those
6 photographs up at trial onto a large screen of some kind.

7 Q. Okay. Did you raise the issue on direct appeal of
8 those pictures being shown to the jury in such a large
9 format?

10 A. I don't believe I could have raised it that way
11 because I don't believe there was a separate objection to
12 blowing the pictures up. I did raise the issue as to the
13 admissibility of the photographs.

14 Q. Okay. When you raised the objection or when you
15 raised the issue of the objection of the admissibility of the
16 photographs, what grounds did you raise that on?

17 A. That's a 403 analysis.

18 Q. In looking at the pictures were the pictures divided
19 into two sets that you are aware of?

20 A. I can't remember.

21 Q. Okay. Were there any differences in any of the
22 pictures?

23 A. I can't remember.

24 Q. Okay. If you would, do you have a copy of the
25 transcript?

1 A. I do not.

2 Q. Okay. If I handed you a copy, would that refresh
3 your memory?

4 A. It should.

5 Q. (Proffering.)

6 A. Do you have a specific place you want to direct me?

7 Q. I do. If you would turn to page 300.

8 A. Okay.

9 Q. I think at the very last question on the bottom of
10 that page and continuing on, a question was asked by the
11 Assistant Solicitor that was objected to by Mr. Cochran at the
12 top of page 301; is that correct?

13 A. Yes.

14 Q. Okay. What was your thought process in reviewing
15 this and in ultimately not deciding to raise it as an issue in
16 direct appeal?

17 A. I don't recall what my thought process was with
18 regard to this issue specifically. I remember the two issues
19 that I did raise. You know, I would say that when it comes to
20 an issue like this I certainly wouldn't have a strategic
21 reason not to raise something that I would think would be a
22 winning issue.

23 Q. Okay. When you look at all potential issues to
24 raise on appeal, how do you go about deciding which ones get
25 raised and which ones do not?

1 A. I raise the ones that I believe have the greatest
2 chance of success and if there are some issues that I don't
3 believe will win but are not frivolous, I usually will not
4 raise those so as to not clutter the brief.

5 Q. Okay. So you do sort of prioritize the issues in
6 some way?

7 A. To some degree, but if I believed an issue was a
8 winning issue, I would raise it.

9 Q. Okay. When something is not objected to and not
10 preserved for appeal, do you have any recourse in the direct
11 appeal process?

12 A. No. The Court of Appeals has very strict error
13 preservation rules and the Attorney General challenges
14 preservation at every opportunity.

15 MR. WALLER: I have no further questions of this
16 witness.

17 THE COURT: Cross examination, Mr. Mitchell.

18 CROSS EXAMINATION

19 BY MR. MITCHELL:

20 Q. Good morning, Mr. Alexander.

21 A. Good morning.

22 Q. Thank you for being here today.

23 A. Thank you for accommodating me. I appreciate it
24 from the Court as well.

25 THE COURT: Sure.

1 BY MR. MITCHELL:

2 Q. Can you give us your standard procedure of how you
3 determine which issues to raise on appeal?

4 A. I wouldn't say I have a standard procedure. I mean,
5 I look at the issues and try to determine which ones have a
6 great chance of success. I review them and I keep a mental
7 list of what's in there and then research the ones that I
8 think are potentials and then based on the research then I
9 will write them.

10 Q. If you would go through the transcript and make note
11 of what you believe is preserved and what's important and then
12 raise those issues on appeal --

13 A. Generally.

14 Q. -- is that correct?

15 A. Yes, generally.

16 Q. Now, you raised the issues that you believe have the
17 most merit?

18 A. General, yes.

19 Q. You would raise the strongest issues in your brief?
20 You wouldn't raise every issue; is that right?

21 A. Well, there is a case called James versus Barnes,
22 United States Supreme Court and it says that appellate counsel
23 does not have the duty to raise every non frivolous issue. So
24 there are issues that I see as issues that aren't frivolous
25 but that aren't winners. They are very likely to lose on

1 appeal and I would view those issues as cluttering the brief
2 and distracting the Court from the issues that I believe have
3 the greatest chance of success. So I will eliminate those
4 issues, but if I believe an issue to be a winner, I will raise
5 it.

6 Q. Now, the two issues that you raised in this case,
7 the first one was a 403 analysis of the photographs of the
8 victim's genitalia; is that correct?

9 A. Correct.

10 Q. And it was your position that - it was Mr. Reaves'
11 position that those, that the trial court abused its
12 discretion in admitting those photographs; is that correct?

13 A. Correct.

14 Q. And then the second issue deals with the nurse
15 examiner; is that correct?

16 A. Correct.

17 Q. And that would have been that she testified outside
18 her scope that she was qualified to testify to; is that
19 correct?

20 A. I believe that's correct.

21 Q. Okay. So you did raise the issue relating to the
22 nurse and her testimony, right?

23 A. I did.

24 Q. Okay. And you did that because you believe those
25 issues to be the two strongest issues?

1 A. Yes, sir.

2 MR. MITCHELL: No further questions. Thank you.

3 MR. WALLER: Nothing further, Your Honor.

4 THE COURT: Thank you, Mr. Alexander. You may step
5 down.

6 MR. ALEXANDER: Thank you, Your Honor.

7 THE COURT: The witness may be excused from his
8 subpoena?

9 MR. WALLER: Yes, sir, Your Honor.

10 THE COURT: All right, sir.

11 MR. ALEXANDER: Thank you, Judge.

12 THE COURT: Yes.

13 MR. WALLER: Your Honor, at this time the applicant
14 rests. And if the Court would entertain a brief argument
15 from me?

16 THE COURT: Oh, yeah. Let's see if the Attorney
17 General has anything. The applicant has rested.

18 MR. MITCHELL: Nothing further.

19 THE COURT: Okay.

20 MR. WALLER: Your Honor, a couple weeks ago when we
21 were in front of you in Richland County and we gave a bit
22 of argument, the applicant contends that trial counsel,
23 if you recall, was ineffective for failing to object to
24 the pictures that were admitted. He did object under
25 Rule 403. We contend that Rule 403 was not the best

1 objection that could possibly have been made specifically
2 with regard to three of the pictures that were taken with
3 some sort of dye enhancing the lacerations.

4 Your Honor, I handed up to the Court two cases,
5 State v. Powers, State v. Jones, if Your Honor still has
6 those. If not, I have brought another copy.

7 THE COURT: I have got Jones and Powers.

8 MR. WALLER: Okay. Your Honor, I believe that issue
9 has already been argued. I believe it's pretty clear.
10 Your Honor, the other issue which was not able to be
11 developed until today was that appellate counsel was
12 ineffective for failing to raise in, the improper
13 corroboration testimony of Templehart, the nurse examiner
14 on appeal. It was objected to under Rule 801(d) which
15 was the appropriate objection.

16 Your Honor, she was precluded from giving diagnosis
17 testimony. She is a nurse, not a physician. However,
18 the judge allowed her to testify to details that were
19 given to her by the victim in this case about the alleged
20 assault that were outside of the time and place testimony
21 that's allowed.

22 Your Honor, if I can hand up a couple of cases. The
23 first being Gray versus Greer and the second being Easel
24 versus State. Your Honor, may I approach?

25 THE COURT: Certainly.

1 MR. WALLER: (Proffering.) Thank you.

2 THE COURT: Thank you.

3 MR. WALLER: Your Honor, those cases, Gray versus
4 Greer is a Federal Court case from the Seventh Circuit
5 Court of Appeals. It stands for that failure to raise an
6 obvious issue on appeal is deficient if it was a
7 reversible issue, and that is the evidence of prejudice.

8 Your Honor, it also goes on to state that the Court
9 must examine the record on appeal to see if the issue is
10 significant and obvious and if it is stronger than the
11 issues presented on appeal, then the presumption of
12 effectiveness is overcome.

13 Your Honor, I believe that is what Mr. Mitchell was
14 referring the last time in that the Court is going to
15 need to do a complete review of the record to determine
16 if this was a valid issue, more valid than the issues
17 that were raised.

18 Your Honor, the other case I handed up is Easel
19 versus State. It's at 345 South Carolina 312 and it
20 states that the remedy for this is a new trial.

21 Your Honor, I also have one further case I would
22 like to hand up. This is Jolly versus State. Your
23 Honor, this is a post conviction relief case, but it does
24 give the Court, I believe, good insight and direction in
25 analyzing this type of improper corroboration testimony.

1 Your Honor, this was a very close case. Mr. Reaves
2 was found not guilty of the burglary. There was not, I
3 believe, overwhelming evidence of guilt. The jury
4 deliberated for quite some time. It was actually dead
5 locked at one point and actually found him not guilty of
6 one of the two charges.

7 Your Honor, outside of the victim herself the most
8 damaging testimony was that of Templehart the nurse
9 examiner.

10 Your Honor, we would ask that you review the record,
11 review the case law that I have provided to you and
12 ultimately grant Mr. Reaves' application for post
13 conviction relief.

14 THE COURT: Thank you, Mr. Waller. Mr. Mitchell.

15 MR. MITCHELL: Your Honor, as to the first issue,
16 the failing to object to the photographs, as noted it
17 was, counsel did object on a 403. It was counsel's
18 testimony that he believed that was the proper objection.
19 He argued that these pictures did nothing more than to
20 inflame the jury. That they were very graphic. That
21 they should not have been presented to the jury because
22 they did not have probative value especially with the
23 blown up pictures. Mr. Cochran testified that 403 was
24 the correct objection and that's our position as well.
25 We think that's a strategic reason for objecting under

1 those grounds. I think everyone agrees that these
2 pictures were very graphic and that the better objection
3 is 403 and not 1001, 2, or 1002 I believe is the rule we
4 were discussing earlier.

5 As far as ineffective assistance of appellate
6 counsel, I think really these issues usually just turn on
7 prejudice. You have to show that the issues raised - the
8 issues not raised were stronger than the issues raised.
9 I don't think the applicant has done that here. I think
10 the two issues raised are as Mr. Alexander testified to
11 the ones he considered were the ones with the most merit,
12 a 403 analysis of the pictures which is what we argued
13 about in this first allegation and that's what he briefed
14 in his first issue on appeal, that that judge abused his
15 discretion in admitting those pictures. And then the
16 second issue that the nurse examiner testified outside
17 the scope of her expertise. She was a nurse, not a
18 doctor and she was limited to testifying to what her -
19 the causation part of her testimony was limited by the
20 judge and it was Mr. Reaves' position on appeal that she
21 had testified outside that.

22 I think those two issues are stronger than the issue
23 of this corroboration testimony. Staying on prejudice
24 you would have to find that applicant would have been
25 successful on appeals, you would have to find that the

1 Court of Appeals would have reversed the conviction. I
2 don't think applicant has proved that here today. I
3 think he's failed to meet his burden in that regard. And
4 I also briefly note that we feel, it's our position there
5 is overwhelming evidence of guilt in that he did - the
6 evidence showed that he was in her apartment. There was
7 nothing - there was no issue about that. It was his
8 defense that this was consensual sex. It's our position
9 that it was not. I think the evidence that was admitted
10 at trial due to the severity of these injuries shows that
11 this was not consensual and there is overwhelming
12 evidence of CSC. Thank you, Your Honor.

13 THE COURT: Anything else?

14 MR. WALLER: Nothing further, Your Honor.

15 THE COURT: All right. I will do that. I will do
16 as requested. I will read the transcript and take the
17 matter under advisement and be in touch.

18 MR. WALLER: Thank you, Your Honor.

19 MR. MITCHELL: Thank you, Your Honor.

20 THE COURT: Thank you so much.

21 WHEREUPON, THE HEARING WAS CONCLUDED.
22
23
24
25

1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

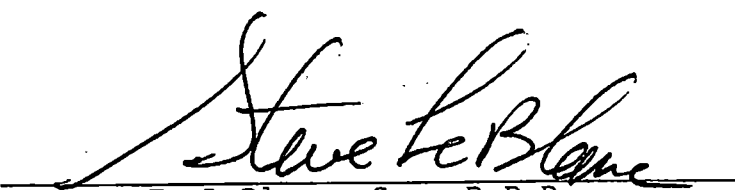
3 (COUNTY OF LEXINGTON)

4
5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,
6 and Official Circuit Court Reporter for the Eleventh Judicial
7 Circuit in and for the State of South Carolina, do hereby
8 certify that I reported the proceedings in the before
9 captioned case in the Court of Common Pleas in and for the
10 State of South Carolina on the 20th day of April, 2015.

11 I FURTHER CERTIFY that the forgoing 17 pages
12 constitute a true and accurate record of said proceedings.

13 I FURTHER CERTIFY that I am neither related, counsel
14 to, nor of interest to any party hereto.

15 IN WITNESS WHEREOF, I have hereunto set my hand at
16 Lexington County, this 5th day of August, 2016.

17
18
19 
20 Steven E. LeBlanc, Sr., R.P.R.
21 Eleventh Circuit Court Reporter
22 State of South Carolina.
23
24
25

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Roosevelt Reaves, #286377

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2014-CP-40-00562

ORDER OF DISMISSAL

2015 OCT 13 PM 12:31
LEANETTE W. McBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed January 27, 2014. Respondent made its Return on June 23, 2014, requesting an evidentiary hearing be convened. Jonathan D. Waller, Esquire was appointed by the Richland County Clerk of Court. An evidentiary hearing was held on April 2, 2015, at the Richland County Courthouse. Applicant was present and represented by Counsel Waller. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent. The record was held open to allow the Court to receive testimony from appellate counsel David Alexander, Esquire. A second hearing was convened on April 20, 2015, at the Lexington County Courthouse. The parties waived venue to allow the hearing to proceed.

At the PCR hearing, Applicant testified on his own behalf. Also testifying was Applicant's plea counsel, Charlie W. Cochran, Esquire and appellate counsel David Alexander, Esquire. This Court had before it the Richland County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR application, the Return, and the trial transcript.

SCANNED



I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted during the May 2010 term of the Richland County Grand Jury for Criminal Sexual Conduct in the First Degree (2010-GS-40-1317), and Burglary in the First Degree (2010-GS-40-1305). Applicant was represented by James D. Cooper, III¹, Esquire, Charlie W. Cochran, Esquire, and Clarke Newton, Esquire. On April 11-13, 2011, Applicant proceeded to a jury trial before the Honorable Clifton B. Newman, where he was convicted as indicted of Criminal Sexual Conduct in the First Degree and acquitted of Burglary in the First Degree. Judge Newman sentenced Applicant to thirty (30) years' imprisonment for Criminal Sexual Conduct in the First Degree.

A Notice of Appeal was filed and an appeal was perfected on Applicant's behalf. Following briefing, the South Carolina Court of Appeals affirmed his conviction and sentence by unpublished opinion. State v. Roosevelt Reaves 2013-UP-422 (Ct. App. filed November 20, 2013). The Remittitur was sent on December 6, 2013.

In this action, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel in failing to appropriately challenge State's exhibits 17-22 (enhanced photos of CSC victim's injuries).
2. Ineffective assistance of appellate counsel in failing to raise the issue of whether the trial court improperly overruled an objection to the nurse examiner's alleged corroboration testimony.

¹ Mr. Cooper was deceased at the time of the PCR hearing.

II. SUMMARY AND EVIDENCE PRESENTED AT THE PCR HEARING

Applicant's Testimony

Applicant testified he was living in Atlanta, Georgia when he was charged with these crimes. He was arrested a month and a half after the incident. Anastasia L. Walker, Esquire was first appointed to represent Applicant. James D. Cooper, III, was subsequently appointed and represented Applicant through his trial. Applicant testified he was advised of the charges against him and the penalties that the carried. He testified the case was a "he-said, she-said" case. He testified he was acquitted of the first degree burglary charge. Applicant testified he conceded that the DNA evidence was a match because he claimed the sexual intercourse was consensual.

Applicant testified he spoke to Counsel Alexander and that they mostly discussed the photographs that were entered into evidence. Applicant commended his attorneys for their performance and effort, but noted that he believed there were some issues.

Counsel Charlie W. Cochran's Testimony

Counsel Cochran testified he is currently a public defender in Charleston County and was previously with the Richland County Public Defender's Office. Counsel Cochran testified the State's theorized that Applicant was lurking outside of the victim's residence. He testified the DNA was negated because Applicant claimed he met the victim earlier and that the sex was consensual. He noted the State sought to introduce various photographs showing the vaginal trauma to support their case that the sex was not consensual. He testified the pictures were extremely graphic and were presented to the jury on a projector after they had been enlarged. He explained that he raised an objection under Rule 403, SCRE and cited case law in support of those objections. He testified both sets of photographs were admitted over his both his pre-trial

SCANNED
Page 3 of 11

and contemporaneous objections under Rule 403, SCRE. He explained that the pictures were done by colposcopy and that a dye was used to emphasize the injuries.

Counsel Cochran testified he also objected to portions of the sexual assault nurse examiner's (SANE) testimony as hearsay. The trial court limited the testimony to the testimony to time and place.

Counsel David Alexander's Testimony

Counsel Alexander testified he was assigned to Applicant's case through his position with the South Carolina Commission on Indigent Defense, Appellate Division. He testified he had around one-hundred twenty (120) open cases currently. He testified it is his standard practice to read the entire record and determine which issues are preserved for appellate review. Counsel Alexander testified he ordered the photographs of the victim's genital to review. He testified that he did raise the trial court's admission of the photographs as an issue on appeal. He also raised the issue of whether the trial court properly allowed the SANE nurse to testify outside the scope of her expertise. He testified he did not raise an issue regarding the nurse's supposed corroboration testimony. (See Trial Trans. p. 300-01). Counsel Alexander testified he does not have a duty to raise all preserved issues and raises the issue(s) he deems strongest and most likely to prevail on appeal. He testified he raised two issues in the brief because he believed they were the strongest.

III. APPLICABLE LAW

In a post-conviction relief action, Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial

SCANNED

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, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the trial transcript, appellate records, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds counsel's testimony to be credible and persuasive on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Ineffective Assistance of Trial Counsel

Applicant argues trial counsel was ineffective in failing to object to the graphic photographs under Rule 1002, SCRE. This Court disagrees. Rule 403, SCRE was the most appropriate objection and the one aptly made by trial counsel. The photographs presented a graphic visual of the victim's genitalia which presented a risk of being unduly prejudicial. Trial counsel made the appropriate objection through a motion in limine and contemporaneous objections when the photographs were offered for admission. The objection pursuant to Rule 403, SCRE is the stronger, more applicable objection to the admission of photographs.

Further, Applicant has failed to prove prejudice. Applicant must show that an objection under Rule 1002, SCRE, would have been successful. This Court finds that it is likely that objection would have been overruled. "The question of whether to admit evidence under [Rules 1001 to 1004, collectively known as the best evidence rule,] is also addressed to the discretion of the trial court." State v. Mitchell, 399 S.C. 410, 421, 731 S.E.2d 889, 895-96 (Ct. App. 2012) citing State v. Halcomb, 382 S.C. 432, 443-44, 676 S.E.2d 149, 154-55 (Ct.App.2009) (parentheticals in original). Therefore, Applicant cannot prove that it is likely the result of the trial would have been different had trial counsel made an objection under Rule 1002, SCRE.

Ineffective Assistance of Appellate Counsel

Applicant further argues appellate counsel was ineffective in failing to challenge the trial court's decision in allowing the nurse examiner to testify to statements made by the victim. (See



Trial Trans. p. 300-01). This Court finds Applicant failed to meet his burden in proving counsel was deficiency and in proving the requisite prejudice entitling him to relief. This allegation must be denied and dismissed with prejudice.

Relevant Law

A defendant is entitled to effective assistance of appellate counsel. Tisdale v. State, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004), citing Southerland v. State, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999). To prevail on a claim of ineffective assistance of appellate counsel, an applicant must establish both deficiency and prejudice. Southerland, 337 S.C. at 616, 524 S.E.2d at 836. If an applicant can establish both deficiency according to professional norms and prejudice to the extent that he would have been successful on appeal, he is entitled to a new trial. See Ezell v. State, 345 S.C. 312, 316, 548 S.E.2d 852, 854 (2001); Southerland, 337 S.C. 615-16, 524 S.E.2d at 836. See also Simpkins v. State, 303 S.C. 364, 401 S.E.2d 142 (1991) (post-conviction relief of a new trial granted based on appellate counsel's failure to raise an issue on appeal that constituted reversible error).

“Although it is possible to bring a successful ineffective assistance of appellate counsel claim based on failure to raise a particular issue on direct appeal, the Supreme Court has reiterated that it is ‘difficult to demonstrate that counsel was incompetent.’” United States v. Mason, No. 3:06-607-CMC, 2012 WL 5845807 at *1 (D. S.C. Nov. 19, 2012) (quoting Smith v. Robbins, 528 U.S. 259, 288, 120 S. Ct. 746, 765 (2000)). While appellate counsel is required to provide effective assistance of counsel, “appellate counsel is *not* required to raise every non-frivolous issue that is presented by the record.” Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990), citing Jones v. Barnes, 463 U.S. 745 (1983). “For judges to second-guess

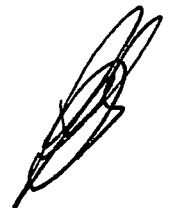


reasonable professional judgments and impose on . . . counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy . . .” Jones, 463 U.S. at 754. Additionally, our Supreme Court has expressly rejected the notion that appellate counsel has an obligation to raise all meritorious issues on appeal. Tisdale v. State, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004). “Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome.” Smith v. Robbins, 528 U.S. at 288, 120 S. Ct. at 765 (quoting Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986)). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones, 463 U.S. at 753. Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not deficient performance. Griffin v. Aiken, 775 F.2d 1226, 1235 (4th Cir. 1985).

“To establish prejudice relating to the actions of appellate counsel, Defendant must establish a reasonable probability that, but for his counsel's unreasonable failure to include a particular issue on appeal, he would have prevailed on his appeal.” United States v. Mason, 2012 WL 5845807 at *1 (citing Smith v. Robbins, 528 U.S. at 285-86, 120 S. Ct. at 764).

Analysis

Here, Counsel Alexander testified he briefed what he believed to be the two strongest issues. Applicant has failed to show otherwise. First, this Court finds that Applicant has failed to show that Counsel Alexander's performance was deficient, where there is no standard requiring counsel to raise every preserved issues and where he raised two stronger issues on Applicant's behalf. Counsel's testimony as to his preparation and strategy is credible and persuasive to this Court. The issues raised were potentially meritorious issues that were clearly preserved.



Second, this Court finds that Applicant has failed to establish prejudice, as there is no reasonable likelihood that he would have prevailed on appeal had this issue been raised. Counsel Alexander's testimony is persuasive in that he raised the issues he believed at the time to be strongest. This Court will not second guess that very reasonable decision.

This Court finds the trial court properly admitted the statements made by the nurse examiner. "The admission or exclusion of evidence is within the discretion of the trial court and will not be reversed on appeal absent an abuse of discretion." State v. Foster, 354 S.C. 614, 620, 582 S.E.2d 426 (2003). "An abuse of discretion occurs when the trial court's ruling is based on an error of law." Id at 621, 582 S.E.2d at 429. To warrant reversal, an appellant must show not only an alleged error, but also resulting prejudice. State v. Fulton, 333 S.C. 359, 363-64, 509 S.E.2d 819, 821 (Ct. App. 1998). The trial court properly admitted the nurse's testimony as a statement for purposes of medical diagnosis or treatment. See Rule 803(4), SCRE. The trial court ruled: "The witness can testify to information gathered for purposes of her services." (Trial Tr. 301, lines 7-9). The victim was giving information to the nurse examiner pertinent to the diagnosis and treatment of her injuries sustained during the rape. It is not likely that an appellate court found find the trial court abused its discretion in admitting the statement.

In addition, the trial court could have admitted the statement as a prior consistent statement. See Rule 801(d)(1)(B), SCRE. Applicant questioned the victim on whether she reviewed her testimony with the solicitor's office prior to the trial. (Trial Tr. P. 131, line 17 - p. 132, line 20). The State was then allowed to present the prior consistent statements to combat Applicant's implied allegation of improper influence or coaching. See State v. Jeffcoat, 350 S.C. 392, 565 S.E.2d 321 (Ct. App. 2002) (holding that the testimony of victim's mother and therapist was properly admitted to rebut a charge of improper influence on victim's testimony).

SCANNED



Accordingly, this Court finds the Applicant failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. This Court also finds the Applicant failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. This Court concludes Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

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 regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

V. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate counsels' performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, 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 PCR counsel'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), SCRCP, provides that if Applicant wishes to seek

SCANNED
Page 10 of 11
SCANNED



appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is 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 shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 30 day of September, 2015.



BROOKS P. GOLDSMITH
Presiding Judge

_____, South Carolina